

FINAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Sections 11-400a.(1) and (2)

Specific Purpose:

This section is adopted to clarify the definition of formal education in Section 11-400f.(9) which is defined as education "from an accredited or approved college or university." These terms are currently defined in the exact language in regulations governing group homes in Title 22, California Code of Regulations, Division 6, Chapter 5, Sections 84001(a)(1) and (2).

Factual Basis:

Child Care and Supervision, Social Work, and Mental Health Services are the components that make up the rate determination for group homes. These activities will be used by group home providers and the Department to determine the biennial rate. Current rate regulations allow for additional weighting for Child Care and Supervision if the employee has "formal education." In addition, social work and mental health staff are also required to have specified "formal education." In order to be allowed points for rate purposes. Currently, "formal education" is defined in 11-400f.(9) as education "from an accredited or approved college or university." Group home providers must look to Title 22, California Code of Regulations, Division 6, Chapter 5, which governs group homes, and specifically Sections 84001(a)(1) and (2), which provide the definitions of "accredited" and "approved." This will provide clarity and ease for application of formal education for group home providers for rate setting purposes.

Handbook Section 11-400a.(1)

Specific Purpose/Factual Basis:

This handbook is being added to provide guidance to group home providers in assessing authorized accrediting agencies. This is the same language that guides group home providers Title 22, California Code of Regulations, Division 6, Chapter 5, Handbook Section 84001(a)(2). This will provide clarity and ease for application of formal education for group home providers for rate setting purposes.

Sections 11-400a.(3), (4) and (5) [Renumbered from Sections 11-400a.(1), (2) and (3)]

Specific Purpose/Factual Basis:

These sections are renumbered to accommodate the adoption of new Sections 11-400a.(1) and (2).

Section 11-400c.(3)

Specific Purpose:

This section is amended to clarify the definition of Child Care and Supervision activities as defined in Title 22, California Code of Regulations, Division 6, Sections 80001(c)(3) and 84065.2(b).

Factual Basis:

Child Care and Supervision activities are part of the level of care services that make up the rate determination for group homes. These activities will be used by group home providers and the Department to determine the biennial rate and would normally be found in the definition of Daily Supervision; however, the definition for Daily Supervision is no longer in Title 22. The section is amended for clarity and consistency with Community Care Licensing regulations.

Handbook Section 11-400c.(3)

Specific Purpose:

This handbook is being added to clarify the activities associated with care and supervision as defined in Child Care and Supervision activities in Title 22, California Code of Regulations, Division 6, Sections 80001(c)(3) and 84065.2(b).

Factual Basis:

This handbook is being added for clarity and consistency with Community Care Licensing Regulations and to further define specific functions of Child Care and Supervision activities for group home providers. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency to correctly apply the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-400c.(4)

Specific Purpose/Factual Basis

This section is amended to reflect prior changes to Title 22, California Code of Regulations, Division 6, Section 84065.2(b) pertaining to child care staffing duties. This amendment identifies the citation change in Community Care Licensing and is needed for consistency in order to correctly apply the determination process in accordance with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Handbook Section 11-400c.(4)

Specific Purpose/Factual Basis:

This handbook section is being amended to correctly identify the prior changes to Title 22, California Code of Regulations, Division 6, Section 84065.2(b) reference, and add section (5) from Title 22 into the Manual of Policies and Procedures. This handbook section is amended for the correct citation and for clarity and consistency with Community Care Licensing Regulations and to further define specific functions of child care duties for group home providers.

Section 11-400c.(5)

Specific Purpose:

This section is amended to clarify the duties of the child care worker as identified in the employee's duty statement and as one who is providing child care and supervision. This section is also amended to correctly identify the Title 22, California Code of Regulations, Division 6, Chapter 5, Section 84165(d) and (e), reference for a child care worker meeting CCL personnel requirements.

Factual Basis:

A child care worker is an employee whose hours are counted to determine the rate classification level of a group home for biennial rate application and setting purposes. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency to correctly apply the provisions of Welfare and Institutions Code Section 11462(a)(3).

Final Modification:

Following the public hearing, this proposed section has been revised to define a child care worker as a group home employee performing child care duties as identified in the employee's duty statement. This revision more accurately identifies employees who are not regularly performing child care duties but who may be used, as needed, to perform those duties.

Section 11-400d.(1)

Specific Purpose:

This section is being deleted because "Daily Supervision" is no longer a term used by Community Care Licensing and has been removed from Title 22 regulations. Division 11 regulations are being amended to reflect the current licensing regulations. Subsequent Sections 11-400d.(2) through 11-400d.(9) are renumbered to Sections 11-400d.(1) through 11-400d.(8) respectively for consistency.

Factual Basis:

This section is being deleted for clarity and consistency with Community Care Licensing regulations. This amendment deletes a reference to an obsolete term and is necessary to correctly apply the provisions of Welfare and Institutions Code Section 11462(a)(3). The renumbering is done for consistency.

Section 11-400e.(2)

Specific Purpose:

This section is amended to correctly identify the definition of a mental health professional as described in Section 11-400m.(3) [not 11-40m.(3)]. This amendment corrects a typographical error under the definition of "emergency placement."

Factual Basis:

This amendment clarifies for group home providers that within the scope of emergency placement, a mental health professional as defined in Division 11-400m(3) must have evaluated the child and certified the placement. Since providers will be held accountable to these regulations under the biennial process, correction of this typographical error is necessary for consistency to correctly apply the provisions of Welfare and Institutions Code Section 11462(a)(3) as it applies to the rate application process.

Sections 11-400f.(8) through 11-400f.(8)(B)

Specific Purpose:

These sections are amended to more accurately identify a fiscal year and annual accounting periods for providers in relationship to the submission of biennial rate applications.

Factual Basis:

This amendment deletes the current provider fiscal year of July 1 through June 30 of the following year and expands the definition of fiscal year to include any consecutive 12 month period. The original reference to a State fiscal year was based on the original rate application process and the annual submission was tied to this fiscal year. Because of the

biennial rate application process, providers are no longer tied to the State fiscal year for application submission. As such, the Department has clarified for providers the different types of fiscal years that can be applied to their biennial rate application. This amendment clarifies that a fiscal year isn't tied to a State fiscal year because of the biennial rate application process rather than the annual rate application process.

Section 11-400f.(15)

Specific Purpose:

This section is amended to further define full-time equivalent especially in relationship to training hours required for group home staff.

Factual Basis:

This amendment is necessary to assist providers in determining the number of full-time equivalents (FTEs) needed for training hours which can be applied to the determination of the biennial rate and subsequently the rate classification level. Currently the regulations do not specify that a FTE position can be filled by one or more employees implying that the Department required group home providers make available a total of 40 hours of training per employee instead of per full-time equivalent. The Department has never intended or applied this standard. This amendment clarifies the definition of full-time equivalent to provide consistency with the application throughout the regulations.

Handbook Section 11-400f.(15)

Specific Purpose:

This section is added to provide an example for providers on how to determine the number of FTEs the provider will annualize and require training hours for child care staff if claiming a weighting for training.

Factual Basis:

This added handbook gives providers a better understanding of how FTEs are determined so that providers can determine weighted training for biennial rate application and rate classification levels. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency to correctly apply the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-400g.(3)

Specific Purpose:

This section is amended to specifically define a group home administrator certificate issued by Community Care Licensing indicating completion of that program.

Factual Basis:

Currently the regulations indicate that this certificate is in a certification program "to be developed by" Community Care Licensing. Community Care Licensing has since developed this certification program and issues group home administrator certificates which are required for a biennial rate application. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency to correctly apply the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-400h.(2) and (3)

Specific Purpose/Factual Basis:

These sections are correcting in regulation, the Title 22, Division 6, Section 84265 citations referencing houseparent and houseparent duties. These amendments in regulation are needed for clarity and consistency in defining houseparent and houseparent duties as defined by Community Care Licensing where reference section changes were previously made in Title 22. These amendments are needed for consistency with applying the biennial process in accordance with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-400l.(5)

Specific Purpose:

The section is being adopted because of a license title name change to Marriage, Family Therapist in the Business and Professions Code, Section 4980.08, added by Statutes of 1998, effective July 1, 1999.

Factual Basis:

This definition has been added to reflect the Business and Professions Code change that made a license title name change from Licensed Marriage, Family and Child Counselor (LMFCC) to Licensed Marriage and Family Therapist (LMFT). However, the LMFCC category will continue to be defined in regulation as well as adding LMFT. This category of licensed social work is used in the biennial application and rate setting process to identify services to children and subsequently is applied to the rate classification level of a group home.

Section 11-400n.(4)

Specific Purpose:

This section is being amended to delete the reference to "fiscal year" and replace it with the phrase "rate period".

Factual Basis:

This amendment is necessary to clarify the rate period as a biennial period for a new provider and to assist the Department in implementing the biennial determination process in accordance with the provisions of Welfare and Institutions Code Section 11462(a)(3). This amendment is necessary to ensure consistency with the biennial rate determination process.

Section 11-400o.(2)

Specific Purpose:

This section is being adopted to provide a definition for the term, "On-going Rate Request or Rate Application" as it pertains to Foster Family Agency Rate Requests and Group Home Rate Applications.

Factual Basis:

Currently the regulations identify an annual rate application and setting process. All Group Home and Foster Family Agency providers were required to submit their applications prior to a specific date. The requirement to adopt a biennial process allows providers to submit according to their corporate fiscal year. The term "on-going" was adopted to distinguish the biennial process from other types of rate application processes applicable to foster family agencies and group home program providers. This amendment is needed for consistency with the biennial determination process specified in Welfare and Institutions Code Section 11462(a)(3).

Sections 11-400o.(3) and (4) [Renumbered from Sections 11-400o.(2) and (3)]

Specific Purpose/Factual Basis:

Sections 11-400o.(2) and (3) are renumbered to Sections 11-400o.(3) and (4) respectively for for clarity and numerical consistency due to the adoption of a new Section 11-400o.(2).

Section 11-400o.(3)(A)

Specific Purpose/Factual Basis:

Section 11-400o.(3)(A) corrects a citation in regulation referencing a citation change previously made to Title 22, Division 6, Section 84265. The Community Care Licensing citation correction is necessary for consistency with CCL regulations. This amendment is

needed for consistency with the biennial determination process in accordance with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-400r.(3)

Specific Purpose:

This section is being added to provide a definition for a rate period for which a rate is being set for both group home and foster family agency providers.

Factual Basis:

The rate period for the AFDC-FC biennial rate is consistent with that identified and defined in accordance with Welfare and Institutions Code Section 11462(a)(3)(A) and Section 11463(i)(1). This amendment is necessary to clarify the biennial period in accordance with Welfare and Institutions Code Section 11462(a)(3) and to ensure consistency with the biennial rate determination process.

Sections 11-400r.(4) through (7) [Renumbered from Sections 11-400r.(3) through (6)]

Specific Purpose/Factual Basis:

Sections 11-400r.(3) through (6) are being renumbered to Sections 11-400r.(4) through (7) for clarity and numerical consistency due to the adoption of new Section 11-400r.(3) and to correctly apply the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-400r.(8) and (9)

Specific Purpose:

Section 11-400r.(8) is added to identify a reporting period for both on-going and new providers. Current Section 11-400r.(7) is renumbered to 11-400r.(9) for consistency.

Factual Basis:

A reporting period is required as part of the providers rate application. As such it is important for consistency with the biennial determination process to identify for on-going programs, the reporting period would be the preceding two fiscal years and for all other programs, the reporting period would be a projection of the next rate period. Current Section 11-400r.(7) is renumbered for clarity and consistency. These amendments are made in accordance with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-400s.(5)

Specific Purpose:

This amendment adds the social work licensed category of Marriage, Family Therapy to reflect the license title name change in the Business and Professions Code to this social work category.

Factual Basis:

This amendment identifies that the Business and Professions Code changed Section 4980.08 effective July 1, 1999, and made a license title name change to Licensed Marriage, Family and Child Counselor (LMFCC) to Licensed Marriage and Family Therapist (LMFT). This amendment will correctly reflect the licensed social work categories, which are used in the biennial application and rate setting process. This amendment will also correctly reflect the updated Business and Professions Code change to the social work category and will recognize both licensed categories.

Section 11-400t.(2)

Specific Purpose/ Factual Basis:

This section is correcting a citation change in the MPP, Division 11-400 section definition of on-going training which has been added through this biennial process. For the purposes of provider's establishing a training plan for submission for the biennial rate period, the training plans need to be made with the biennial, or "on-going" process in mind. These corrections are necessary to maintain the accuracy of the regulations. This amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.15

Specific Purpose/Factual Basis:

This section is amended to update the reference "fiscal year 1999/00" to "fiscal years 2002-03, 2003-04, and 2004-05" and to update the cross reference to the Welfare and Institutions Code.

Handbook Section 11-402.151

Specific Purpose:

This amendment eliminates the numbering in the handbook section and updates the standardized schedule of rates for group homes.

Factual Basis:

Regulatory numbering is not required in handbook and this amendment deletes the number. Also, the amendment updates the standard schedule of rates used by group home providers for information purposes in assessing the biennial rate application and request process. This amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.211(a) and .212(a)

Specific Purpose:

These sections are being amended to delete "No. 5-89" pertaining to the Industrial Welfare Commission Order and adopt the phrase, "Order Regulating Wages, Hours, and Working Conditions in the Public Housekeeping Industry."

Factual Basis:

These amendments are necessary because the order number does not reflect current regulations as cited in Title 8, California Code of Regulations, Section 11050 and therefore, the reference is no longer accurate. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.211(a)(3) and (4) and 11-402.212(a)(2) and (3)

Specific Purpose/Factual Basis:

These sections are amended to remove the reference to the SR 2 form revision date. The forms referred to in these regulations are listed in Section 11-406, with the revision date of the forms to facilitate forms management and contain the changes to the regulations to one section. This amendment is needed for consistency in order to correctly apply the provisions of Welfare and Institutions Code Section 11462(a)(3).

Final Modification:

At the Department's discretion, these sections have been amended to add a comma (,) after form number SR 2 for clarity.

Section 11-402.221(c)(1)

Specific Purpose/Factual Basis:

This section is amended to update the citation change in Section 11-400r. in the definitions section pertaining to residential child care that was made as a result of additions or deletions to definitions in this biennial regulations package. This amendment is necessary for clarity and consistency for providers preparing a biennial application. Since providers will be held

accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.221(d)(1)(A) and (B)

Specific Purpose:

These sections are amended to correct significant but unintended grammatical errors on the subject of formal education that will aid in clarity of regulations.

Factual Basis:

These amendments are necessary to maintain the accuracy of the regulations. Currently the regulations inadvertently omit the word "or" when describing the formal education needed for weightings under Child Care and Supervision. This omission implied a more restrictive requirement for formal education which was never intended nor was applied by the Department. The Department has always held providers to the standard of one of the three education requirements rather than multiple requirements and under the biennial process, providers will be held to the same standard. Since providers will be held accountable to these regulations under the biennial process, this amendment is necessary for consistency with Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.221(e)(1)

Specific Purpose:

This section is being amended to update the full-time equivalent "person" to "position" and the citation reference in Section 11-400o. that sets forth the requirement related to on-going training; and, sets forth that on-going training is calculated using full-time equivalent hours. This section citation is amended because of changes to the definitions section.

Factual Basis:

This amendment is necessary to maintain the consistency of the regulations in relation to the provider's biennial application and rate request process. The definitions section has been changed because of additions and the renumbering is necessary for accuracy and consistency. Since providers will be held accountable to these regulations under the biennial process, this amendment is necessary for consistency with Welfare and Institutions Code Section 11462(a)(3).

Handbook Sections 11-402.221(e)(2)(C) and (D)

Specific Purpose/Factual Basis:

Handbook Section 11-402.221(e)(2)(C) is amended to delete the reference to "per employee" to assist providers in properly developing and reporting the appropriate number of training hours per full-time equivalent for employees to receive the additional weighting for training on the biennial rate application. Also this amendment deletes the numbering in these handbook sections as numbering is not a regulatory requirement for handbook.

Sections 11-402.221(e)(3)(A), (A)(i) [Handbook], and (C)

Specific Purpose:

These sections are amended to maintain consistency and correct citations to reflect changes in Title 22, Division 6, Section 84065. In addition, these changes are consistent with changes being made to Division 11, Section 11-400o. pertaining to training required by Community Care Licensing. Also this amendment deletes the numbering in the handbook section as numbering is not a regulatory requirement for handbook.

Factual Basis:

This amendment is necessary to reflect prior changes made to Title 22 and to provide consistency with the regulations. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Handbook Sections 11-402.222(a) and 223(a)

Specific Purpose:

The handbook reference demonstrating social worker activities weightings and mental health services weightings has been amended because of a license title change in the Business and Professions Code that was effective July 1, 1999.

Factual Basis:

The Business and Professions Code issued a license title name change in Section 4980.08, effective July 1, 1999, added by Statutes of 1998, Chapter 108. The Business and Professions Code license title name change affected the licensed category of "licensed marriage, family and child therapist" and changed the title to "licensed marriage and family therapist". This amendment updates the Division 11 regulations to include the category of Licensed Marriage, Family Therapist (LMFT) and indicate that this title is a category of social work and mental health professional used in the biennial application and rate setting process to identify services to children and subsequently the rate classification level of a group home. This amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.234

Specific Purpose:

This section is amended to clarify point computation for mental health treatment services for the biennial rate application process and to remove the revision date from the form used to report those points.

Factual Basis:

Currently the regulation specifies that the "provider shall report the actual number of mental health treatment services points "per child" on the SR 2 form. However, the form requires reporting the actual number of mental health treatment services points "per program." The Department has never intended nor used the standard of reporting per child. This section clarifies that those points should be identified for each program per month not for each child per month. This section also deletes the revision date of the SR 2 as these forms are listed with current dates in another section for ease of amendments. This amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Final Modification:

At the Department's discretion, this section has been amended to repeal "(Rev.)" after form number SR 2 which was inadvertently left in at the emergency filing.

Section 11-402.236

Specific Purpose/Factual Basis:

This amendment is a correction to maintain numerical consistency. Section 11-402.151 was deleted because the number .151 was in handbook and handbook does not require regulatory numbering. The section number is being deleted in these regulation changes. The renumber is part of the changes in Division 11, Section 11-402.15. This correction is being made for clarity and consistency of regulations. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.237 and .238

Specific Purpose:

This amendment changes the time period from "12 months" to "reporting period" for point calculation purposes as the provider's reporting period will be dependent upon the corporation's fiscal year and the reporting period is a biennial time period.

Factual Basis:

Providers are now required to apply for a rate on a biennial basis and must report program points based on their biennial reporting period rather than an annual period. These sections amend the time period from "12 months" to "reporting period." Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Handbook Section 11-402.239

Specific Purpose/Factual Basis:

This amendment deletes the numeric reference in handbook as handbook does not require regulatory numbering. This amendment provides clarity and consistency in handbook examples for providers who are applying for a biennial rate. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.3

Specific Purpose:

The title of this section is being amended to reflect the change from an "annual" group home rate application process to an "on-going" group home program rate application process.

Factual Basis:

Welfare and Institutions Code Section 11462(a)(3)(A) specifies the department shall determine the rate classification level (RCL) for each group home program on a biennial basis. Submission of the biennial rate application shall be made according to a schedule determined by the department. This amendment is necessary to implement the biennial rate determination process in accordance with the provisions of Welfare and Institutions Code Section 11462(a)(3) and to assist providers in distinguishing between the requirement of biennial and other types of rate applications.

Section 11-402.31

Specific Purpose:

This section is being amended to: 1) delete the reference to "fiscal year" and replace it with "as scheduled by the Department"; and 2) correct an erroneously cited regulation "11-402.59" to read "11-402.358". This section also adds a request for any changes to documentation made during the biennial period be submitted no later than 30 days of the date of change.

Factual Basis:

Welfare and Institutions Code Section 11462(a)(3)(A) specifies the department shall determine the rate classification level (RCL) for each group home program on a biennial basis. Submission of the biennial rate application shall be made according to a schedule determined by the department. Deleting the reference to "fiscal year" and replacing it with the phrase "as scheduled by the Department" is necessary to implement the biennial rate determination process in accordance with the provisions of Welfare and Institutions Code Section 11462(a)(3). Additionally, because program rates will be set for a biennial period, the Department has added a request for any changes to documentation made during that two-year period be submitted no later than 30 days of the date of change and failure to do so may result in rate termination in accordance with Section 11-402.393. Section 11-402.35 through 11-402.358 correctly specifies the subsection that sets forth the requirements for a complete on-going rate application.

Section 11-402.32

Specific Purpose:

This section is being amended to delete the obsolete due date of May 1 for a provider to submit a rate application and to adopt language requiring the provider to submit a rate application according to a schedule determined by the Department. The Department will provide reasonable written notice of the scheduled due date.

Factual Basis:

Currently the regulations require providers to submit rate applications by May 1 because applications were required annually based on the State fiscal year. Welfare and Institutions Code Section 11462(a)(3)(A) specifies the department shall determine the rate classification level (RCL) for each group home program on a biennial basis. Submission of the biennial rate application shall be made according to a schedule determined by the Department. In addition, the Department has added a provision to provide reasonable notice to providers of scheduled due dates to ensure proper application of this requirement. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.34 and Handbook

Specific Purpose:

This section is being amended to: 1) delete an obsolete effective date of July 1 which was tied to annual submission of applications; and 2) adopt a handbook section which provides the methodology for establishing rate effective dates in order for providers to correctly apply the provisions of Welfare and Institutions Code Section 11462(a)(3).

Factual Basis:

Deleting the obsolete effective date of July 1, which is an annual date, and adopting a handbook section which provides an example for determining the rate effective date are necessary to implement the biennial rate determination process in accordance with Welfare and Institutions Code Section 11462(a)(3). The due date remains consistent with current law of a 60 day period between the due date and the effective date of the rate. The new effective date of the rate will be tied to a schedule determined by the Department in accordance with Welfare and Institutions Code Section 11462(a)(3).

Final Modification:

Following the public hearing, Section 11-402.34 has been modified to clarify that the first day of the second month is the second "full" month of the effective date of the rate. This modification provides a clearer and more concise description while remaining consistent with the current law of a 60 day period between the due date and the effective date of the rate.

Section 11-402.35

Specific Purpose:

This section is being amended to remove the reference to an annual rate application as that term is obsolete. The amendment clarifies for providers what constitutes a complete rate application because the rate will be determined for a biennial rate period and is necessary to implement the biennial rate determination process in accordance with Welfare and Institutions Code Section 11462(a)(3).

Factual Basis:

This amendment deletes the reference to an annual rate application as the annual process is obsolete. This amendment also specifies for the provider what the Department considers a complete rate application as it will assist the provider in understanding the penalties associated with late or incomplete applications. This amendment will implement the biennial rate determination process in accordance with Welfare and Institutions Code Section 11462(a)(3). Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.352

Specific Purpose:

This amendment identifies for the provider that a complete rate application will require information for the reporting period (or preceding two fiscal years). This requirement is for a rate application with no program changes submitting a biennial rate application.

Factual Basis:

This amendment adds language that identifies the reporting period as being the preceding two fiscal years and specifies that the rate application will require information on the SR 2 (Program Classification Report) and the SR 5 (Days of Care Schedule) for the two preceding fiscal years for those providers with no program changes. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.353(a)

Specific Purpose:

This amendment removes the language requiring submission of a copy of the license if not previously submitted. It identifies that the provider submit a copy of the "current" license and that a group home program provider always include a copy of the license(s) as part of a complete group home on-going rate application.

Factual Basis:

This amendment is necessary to maintain program integrity under the biennial rate determination process set forth in Welfare and Institutions Code Section 11462(a)(3). The biennial rate process requires submission of a rate application once every two-years. Because the department will only have an opportunity to evaluate the provider's continued eligibility for an AFDC-FC rate once every two-years, it is necessary to receive a copy of the license with each rate application in order to determine any changes regarding licensure that would impact the provider's continued eligibility for payment of an AFDC-FC rate.

Section 11-402.353(b)

Specific Purpose:

This section is being amended to revise existing language pertaining to the submittal of an administrator certificate. Specifically, the amendment requires submittal of the group home administrator certificate issued by CCL or proof of submittal of the processing fee and training certificate to CCL as part of the complete biennial rate application.

Factual Basis:

Currently the regulations state that "effective with the implementation of the group home administrator certificate program" a provider submits the group home administrator certificate in the application process. Community Care Licensing has since fully instituted the group home administrator certificate program. As such, implementation language is no longer needed within these regulations. With respect to the administrator certificate however, if the administrator has not received the actual certificate at the time of submittal of the biennial rate application, the Department will accept the proof of submittal of the processing fee (to CCL) and training certificate as part of the complete biennial rate application. Because of Administrator turn over or time to receive the actual certificate, the Department currently accepts the standard of alternate proof of completion of the group

home administrator certification. Since providers will be held accountable to these regulations under the biennial process, this amendment is necessary for clarity and consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.354

Specific Purpose:

Existing Section 11-402.354 is being repealed and the subsequent sections renumbered. The submission of all required documentation for a rate application under a biennial rate determination process at each rate application submission date ensures that the Department receives the most current documentation from the provider.

Factual Basis:

Repealing this section is necessary for clarity purposes as it is duplicative of other amendments made herein. Additionally, the submission of all required documentation for a complete rate application once every two-years is necessary to ensure current provider information is being used to set the biennial rate. This amendment is in accordance with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.354(a) and (b) [Renumbered to Sections 11-402.353(c) and (d) respectively]

Specific Purpose:

Sections 11-402.354(a) and 11-402.354(b) are renumbered as Section 11-402.353(c) and Section 11-402.353(d). Renumbered Section 11-402.353(c) is being amended to delete the phrase, "A copy of," and to include the phrase, "if any changes have occurred since submission of the last tax exempt status letter." Renumbered Section 11-402.353(d) is being amended to adopt the phrase, "if any changes have occurred since submission of the last Articles of Incorporation."

Factual Basis:

This renumbering is necessary due to the repeal of Section 11-402.354. Amending renumbered Section 11-402.353(c) ensures consistency with other changes made to these regulations and allows unduplicated submittal of forms because forms are not submitted if there have been no changes. This amendment requires that a provider only submit an updated tax exempt status letter in the event changes occur in the program since the last rate application was submitted. Amending renumbered Section 11-402.353(d) clarifies the requirement that a provider submit an updated Articles of Incorporation in the event changes occurred in the program since the last rate application was submitted. Since providers will be held accountable to these regulations under the biennial process, these amendments are needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.353(e)

Specific Purpose:

This amendment adopts subsection (e) to include a copy of any initial or amended Statement of Information to be included in the documentation submitted as part of a complete biennial rate application with no program changes.

Factual Basis:

The biennial rate application process allows the Department to review a group home's application and documentation every two-years, therefore, there could be changes in the structure of the program that is essential information the Department should be aware of. Adding this subsection ensures that the Department receives information pertinent to any changes to the structure of the corporation. Since providers will be held accountable to these regulations under the biennial process, this amendment is necessary for clarity and consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.353(f)

Specific Purpose:

This amendment adopts subsection (f) to include a complete list of the corporation's Board of Directors to include names, title, addresses and phone numbers, to the list of documents submitted as part of a complete biennial rate application with no program changes.

Factual Basis:

Historically, the Department has asked for a list of the corporation's Board of Directors through an annual notice to providers notifying them of the due date of rate application and the documentation required in the rate application. Currently, the Department has the authority to ask for any and all CCL records that are relevant to setting a rate and the list of the Board members is an important document to ensure that appropriate Board members receive documentation from the Department at the correct address in a timely manner. This amendment includes the list of the corporation's Board of Directors as a part of a complete biennial rate application. Providers will now be reporting information for a two-year period (rate period) so it is even more important that the board information be current. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.355 [Renumbered to Section 11-402.354]

Specific Purpose:

Existing Section 11-402.355 is being renumbered as Section 11-402.354. Renumbered Section 11-402.354 is being amended to delete the words, "fiscal year" and replace them with the words, "rate period."

Factual Basis:

This renumbering is necessary for numerical consistency due to the repeal of Section 11-402.354. Deleting the reference to "fiscal year" and replacing with "rate period" is necessary because fiscal year language is no longer applicable with the biennial rate determination process. Fiscal year implies the annual reporting process used in the past. Providers will now be reporting information for a two-year period (rate period). Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.355(a) [Renumbered to Section 11-402.354(a)]

Specific Purpose:

This section is being amended to require a provider to notify the Department whenever the non profit organization becomes inactive, suspended, or otherwise is not in good standing in addition to notifying the Department if the group home ceases to operate on a non profit basis.

Factual Basis:

The biennial requirement increases the time between reporting periods whereas existing regulations require an annual review. This amended language will ensure that providers are aware of the requirement to report to the Department any substantial changes to their program, which may impact their corporate status. The regulations currently state that providers will notify the department if the group home ceases to operate on a non profit basis. This amendment includes the notification if the group home becomes inactive, suspended, or otherwise is not in good standing with the California Secretary of State. This is necessary to ensure that AFDC-FC funds are not provided to programs that are ineligible for funding. This amendment is necessary to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.356 [Renumbered to Section 11-402.355]

Specific Purpose:

Existing Section 11-402.356 is being renumbered as Section 11-402.355 and the term "fiscal year" is replaced with "provider's rate period."

Factual Basis:

This renumbering is necessary for numerical consistency due to the deletion of Section 11-402.354 and deleting the reference to "fiscal year" and replacing with "rate period" is necessary because fiscal year implies the annual reference and is no longer applicable with the biennial rate determination process. Providers will be required to submit a training plan projected for a two-year (or biennial) rate period. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.357 [Renumbered 11-402.356(a)]

Specific Purpose:

Existing Section 11-402.357 is being renumbered as Section 11-402.356(a). The text of existing Section 11-402.357 is now labeled as subsection (a) under Section 11-402.356 due to the adoption of subsection (b).

Factual Basis:

This renumbering is necessary for numerical consistency in the regulations because of the deletion of Section 11-402.354. Subsection (a) requires the provider to certify that all information in the program statement previously submitted remains current. This is important because of the two-year period between rate application submissions for the department to certify that no program changes were made which may affect the paid RCL. This amendment is in accordance with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.356(b)

Specific Purpose:

This section is being adopted to add a requirement that a provider submit an updated program statement in the event changes occur in the program since the last rate application was submitted.

Factual Basis:

This amendment will ensure under the biennial rate determination process that the Department is informed of the changes made to a program during the two-year period between submission of the application. This addition is necessary to monitor and maintain program integrity. This regulation enables the Department to determine that the program services are consistent with the paid RCL. This adoption is necessary to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.358 [Renumbered to 11-402.357]

Specific Purpose/Factual Basis:

Existing Section 11-402.358 is being renumbered as Section 11-402.357. In addition, renumbered Section 11-402.357 is being amended to update a regulation citation within the text resulting from the deletion of Section 11-402.354 and the subsequent renumbering. New Section 11-402.357 identifies for providers that if they are submitting a rate application for an RCL 13 or 14, additional information needs to be submitted. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.358 (New)

Specific Purpose:

This section is being adopted to add a requirement that a copy of the lease or rental agreement must be submitted as part of a complete rate application.

Factual Basis:

Currently the regulations do not require the provider to submit a copy of the current lease or rental agreement as part of the complete rate application. There have been some statutory changes to shelter costs (addressed in Section 11-402.359) and because providers are no longer submitting a rate application annually, this amendment requires the provider to submit the current lease or rental information so that an appropriate assessment regarding shelter costs can be made for the biennial process. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.359 et seq.

Specific Purpose:

This section addressing shelter costs and the accompanying handbook are being repealed pursuant to Welfare and Institutions Code Section 11462.06(d)(1). The review and approval of shelter costs from the State Attorney General's Charitable Trust Section is no

longer applicable. This section adopts a requirement for the group home's Board of Directors to sign a declaration that the organization will not incur shelter costs resulting from a self-dealing transaction during the rate period.

Factual Basis:

Current regulations require a provider to have an approval letter from the State Attorney General's Charitable Trust Section as a verification of the approval of shelter costs which include self-dealing transactions. A provider is no longer required to have self-dealing transactions for shelter costs reviewed by the Department of Justice's Charitable Trust Section because statute prohibits a provider with self-dealing transactions for shelter costs from receiving an AFDC-FC rate commencing July 1, 2003. This section also requires the provider's Board of Directors to sign a declaration that the organization will not incur shelter costs resulting from a self-dealing transaction during the rate period. This amendment is necessary to implement the provisions in Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.36

Specific Purpose:

This section has been adopted into the group home rate setting regulations to provide consistency with provisions of the foster family agency regulations.

Factual Basis:

Currently group home providers are required to submit on a timely basis a complete rate application which consists of the listed forms and documents. Failure to do such results in penalties to the rates. However often the documents submitted by providers are incomplete or require additional information. When a provider has submitted a substantially complete application, operationally the Department has mirrored the rights afforded to foster family agencies under current regulations and requested that the provider submit the additional documentation within 30 days to avoid penalty. This regulatory language is found in Section 11-403(f)(1)(B)(1) for foster family agencies, however is not currently in the group home regulations. This amendment places this language within the group home section of the regulations and provides consistency between foster family agency and group home providers. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.371

Specific Purpose:

This section is being amended to delete the phrase "timely or" and "within five calendar days of the application due date" and replace it with, "no later than five (5) calendar days

following the application due date." These amendments expand the time period for submission of a good cause request to any time up to 5 days following the due date.

Factual Basis:

Currently the regulations allow a provider to submit a request for good cause for submission of a late or incomplete rate application within five calendar days of the application due date. The Department is to either grant good cause or deny it. If good cause is granted the provider has a specific amount of time to submit the application before penalties are applied. Providers who make good cause requests well in advance of the application due date can get penalized since the time clock for submission of the application is tied to the approval of the request for good cause. This regulation change will delete the reference to a "timely" rate application because under the biennial process if a complete rate application is not submitted by the required due date it will be considered late and as such the word "timely" is duplicative. Additionally, the change from "within five calendar days" to "no later than five calendar days" is necessary to clarify the due date for submitting a good cause request under the biennial rate determination process required pursuant to Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.372

Specific Purpose:

This amendment changes the number of calendar days of the postmarked date of the request for a determination of good cause from 10 to 15 days.

Factual Basis:

The current period of 10 calendar days does not allow for weekends and holidays and does not take into consideration the internal mail distribution process of the Department. This amendment allows extra time for mail distribution to be processed within the Department and the determination of good cause to be made by the Department. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.372(a)

Specific Purpose:

This section is being amended to adopt an alternative date for when a complete rate application is due from a provider whose good cause request was received and approved more than 30 days prior to the original application due date.

Factual Basis:

This amendment is necessary to complete the revised process established in Section 11-402.371. Currently, a provider whose good cause request is approved is given 30 days from the notification date to submit a rate application. Existing regulations require that the 30-day extension period expire after the application due date. However, the amendments in 11-402.371 expand the time period for submission of a good cause request to any time up to 5 days following the due date. That amendment necessitates that the deadline for submission of a late or incomplete application be revised to accommodate a provider who makes a good cause request farther in advance than the previous 5 day requirement. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.372(a)(1)

Specific Purpose:

This section is being amended to delete the obsolete rate effective date of July 1 for approved good cause requests and to adopt language that the effective date of the rate shall be in accordance with Section 11-402.34.

Factual Basis:

These amendments are necessary to facilitate implementation of the provisions of Welfare and Institutions Code Section 11462(a)(3), and are an integral part of the revised good cause request process that is consistent with other amendments made to these regulations. Because the application due date has been amended, the July 1 due date is no longer applicable and the effective date of the rate shall be in accordance with Section 11-402.34 which states that "the effective date of the rate shall be the first day of the second month following the rate application due date."

Section 11-402.372(a)(2)

Specific Purpose:

This section is being amended to delete the 30 days requirement for incomplete or untimely application and instead makes the requirement comply with subsection 11-402.372(a).

Factual Basis:

This amendment is necessary to delete language that is no longer applicable due to the revised good cause request process and to implement Welfare and Institutions Code Section 11462(a)(3). This amendment also informs providers that incomplete or untimely applications will be subject to the penalties in Section 11-402.38. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.381 through 11-402.383 [Renumbered to Sections 11-402.381(a) through (d)]

Specific Purpose:

Sections 11-402.381 through 11-402.383 were repealed to remove specific distinctions between late and incomplete applications. Section 11-402.38 now describes penalties applied to both late and incomplete applications and addresses rate termination.

Factual Basis:

This repeal is necessary as part of a revised penalty procedure, which applies to incomplete as well as late applications as indicated in Section 11-402.38. This amendment is also needed to maintain consistency with other amendments made herein. The existing penalty procedure had been predicated on the allocation of a cost of living adjustment (COLA) provided by the Legislature each fiscal year. Because of the change contained in Welfare and Institutions Code Section 11462(a)(3) to a biennial requirement, the existing penalty procedure created an inequity among providers depending on when submission of the application is required and whether a COLA is provided. This amendment creates a penalty procedure that is equitable to providers as it is not contingent upon a COLA, which may not be consistent rate period to rate period. The new penalty procedure was devised by averaging the past 10 years COLAs and rounding the figure and applies the same monetary penalties during a rate period. The amendment continues to promote program integrity by establishing a penalty intended to encourage providers to submit a timely rate application without unduly penalizing providers or depriving children in out-of-home care. The amendment is necessary to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Handbook Section 11-402.381(d)

Specific Purpose:

As a result of the biennial rate setting process and the new penalty procedures for late or incomplete applications, the handbook is added to provide an example of the penalty process and timelines for late or incomplete applications.

Factual Basis:

Because of the change contained in Welfare and institutions Code Section 11462(a)(3) to a biennial requirement, the existing penalty procedure created an inequity among providers depending on when submission of the application is required and whether a COLA is provided. This amendment creates a penalty procedure that is equitable to providers as it is not contingent upon a COLA. This Handbook provides an example for providers to identify when the penalty process begins and for how long. The amendment to the penalty procedures continue to promote program integrity by establishing a penalty intended to

encourage providers to submit a timely rate application. The amendment is necessary to implement the provisions of Welfare and Institution Code Section 11462(a)(3).

Section 11-402.4

Specific Purpose:

The title of this section is being amended to delete the word, "Annual" and adopt, "On-going Group Home Program" in order to distinguish the new biennial process from the obsolete annual process and other types of rate setting processes.

Factual Basis:

This amendment changes the title to the section describing biennial rate setting processes for programs other than those programs with no changes. These programs will be held to the requirements of the new biennial process and are distinguished by being new programs, new providers, program changes, etc. This amendment is necessary to provide clarity and consistent terminology for the person subject to the regulations, and provide consistency with other amendments made herein. This amendment is necessary to implement Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.411

Specific Purpose:

This section is amended to correctly identify a regulation citation that was changed as a result of additions or deletions to prior sections of the regulations; provide clarity and consistency with the regulations; and, add reference to a form that will be required as a change to the Welfare and Institutions Code.

Factual Basis:

This section is amended to correctly identify the regulation section citations listing all required forms for biennial group home rate applications, and identifying the FCR 16, Group Home Shelter Costs Self-Dealing Transactions Declaration and Survey, to be part of the forms required as a result of a change in Welfare and Institutions Code Section 11462.06(d)(1). The biennial rate setting process and the self-dealing transactions requirement were both statutes enacted in 2003. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.413

Specific Purpose:

This amendment corrects the regulation section citations for biennial rate application forms required in order to establish the provisional rate. The section citations have been changed to reflect the renumbering made elsewhere in the regulations.

Factual Basis:

The current regulations identify sections that have been renumbered and identify where to find the forms submitted by the provider for the provisional rate application. This amendment is necessary for clarity and consistency in existing regulations. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.414

Specific Purpose:

This amendment correctly identifies the regulation section citations that were relocated from Section 11-402.524(b)(1) through (3) to Section 11-402.437(a) through (c). This regulation section refers to requesting additional information to complete the initial rate application process.

Factual Basis:

As a result of the biennial rate application regulation process, the regulation language for the Department to request additional information to complete the initial rate application was moved from the program audits section where it was incorrectly placed, to the correct location for this information. Therefore, the section citation numbering was changed from 11-402.524(b)(1) through (3) to 11-402.437(a) through 11-402.437(c) to correctly identify this move in the regulation language. This amendment is necessary for clarity of regulations and is made in accordance with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.421 and (a)(4)

Specific Purpose:

Section 11-402.421 is amended to insert a period after 11-400n to correctly cite the cross reference. Section 11-402.421(a)(4) is being amended to delete the reference to an annual rate application as annual applications are no longer applicable.

Factual Basis:

Existing regulations identify annual requirements for submission of rate applications. This amendment is necessary to clarify that a new provider will be required to submit an "on-going," or biennial, rate application in accordance with a schedule to be determined by the Department, in order to be considered a new provider, as required by Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.422

Specific Purpose:

This section is amended to correctly identify regulation section citations that were changed as a result of additions or deletions in prior sections. This amendment identifies the required forms associated with initial rate applications for the biennial rate process and adds the FCR 16 to the required forms for this section.

Factual Basis:

The current regulation section information has been changed as a result of the biennial rate setting process. This amendment identifies for the provider where to find the required forms to be submitted for the initial rate application. This amendment correctly identifies the section citation and provides clarity and consistency in existing regulations. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.422(b)

Specific Purpose:

This section is being amended to delete the reference to the submission of a Group Home Program Days of Care Schedule (SR 5) as it is a duplicative request for information. Additionally, this amendment identifies that the information is required for the rate period.

Factual Basis:

The requirement to submit the SR 5 is already stated in Section 11-402.422 via reference to Sections 11-402.351 through 11-402.358. This amendment deletes the duplicative request for information as referenced in the above sections. Additionally, this amendment identifies for providers that the requested information is needed for the rate period, or biennial period. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.422(d) and (e)

Specific Purpose/Factual Basis:

The repeal of these sections delete the requirement to submit a copy of the provisional license and the group home administrator certificate as it is duplicative of Sections 11-402.353(a) and (b). The requirement to submit the required forms and information is already stated in Section 11-402.422 via reference to Sections 11-402.351 through .358. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.426

Specific Purpose/Factual Basis:

This section updates the regulation citations that have been changed in this regulation package as a result of deletions or additions elsewhere in the regulations. This amendment states that the Department will use the data submitted by the provider in the initial rate application for a provisional rate application. This amendment is necessary for clarity and consistency with regulations identifying where to find necessary forms for the rate application process that a new provider will be required to submit for an provisional rate application in accordance with a schedule to be determined by the Department, as required by Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.427 and 11-402.431(c)(2)

Specific Purpose/Factual Basis:

This amendment correctly identifies for the provider, the regulation citations for the department to request additional information to complete the initial rate application and the program change application. The current regulation citation has been deleted and moved in regulation format from the program audits section where it was incorrectly placed, to the correct location for this information. The change of location for this information will facilitate consistency in regulation. This amendment is necessary for clarity of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.432(a) and (b)

Specific Purpose/Factual Basis:

This amendment deletes the reference to the revision date for the SR 1(Group Home Program-Rate Application) and SR 2 (Group Home Program-Program Classification Report). Revision dates of forms identified in this regulation package have been moved to Section 11-406 to facilitate date and other changes to departmental forms. This amendment is necessary to provide clarity and consistency of the regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.432(e)

Specific Purpose:

This amendment deletes the reference to the provisional license issued by CCL in accordance with Title 22, Division 6, Chapter 5 in reference to applications submitted for an RCL change or a program change.

Factual Basis:

This amendment clarifies the requirement for providers to submit the current license issued by CCL regardless of the type of license. Because providers are required to submit forms and information on a biennial basis, it is important that current information be submitted and provisional licenses can have a limited time frame. Therefore, no matter whether the license is provisional or not, the requirement to submit the current license will cover any changes that may occur in the two-year period. This amendment is necessary to provide clarity and consistency of the regulations and assist the provider in submission of the correct documentation for the biennial rate application.

Section 11-402.432(f)

Specific Purpose:

This amendment adds a requirement for the submission of the current lease(s) or rental agreement(s) if not previously submitted as required elsewhere in regulations and the additional submission of the FCR 16.

Factual Basis:

This amendment is necessary for clarity of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3) in requesting specific documentation for an RCL change or program change. This amendment adds a requirement for the submission of the current lease or rental agreement and is required as a result of a change in the Welfare and Institutions Code Section 11462.06(d)(1) that prohibits self-dealing lease transactions for group home shelter costs. Because submittal of information is based on a two-year period, it is important that the Department have the most current information available. This amendment is necessary to provide clarity and consistency of the regulations.

Post-hearing Modification:

Section 11-402-432(g)

Specific Purpose:

The specific purpose of this section is to provide additional guidance and direction to group home providers in reference to an application for an RCL change or a program change.

Factual Basis:

This amendment is necessary for clarity of regulations and has been added to the instructions for program changes. This addition adds a requirement for the submission of any changes in documentation listed in Section 11-402.35 no later than 30 days of the date of change. Because submittal of information is based on a two-year period, it is important that the Department have the most current information available. This amendment is necessary to provide clarity and consistency of the regulations.

Sections 11-402.435, 11-402.435(b)(2) and 11-402.435(c)

Specific Purpose:

This amendment adds the phrase "for a complete rate application" to Section 11-402.435 to differentiate between complete and incomplete rate applications in reference to effective date of rates for program changes. Sections 11-402.435(b)(2) and (c) are amended to remove the revision date on the SR 1 form.

Factual Basis:

These amendments add clarity to this section identifying the effective date of rates for complete rate applications for program changes. The effective date of rates for program changes for incomplete rate applications is identified in Section 11-402.437. These amendments also delete the revision date of identified forms for program changes because all forms with revision dates are now listed in Section 11-406. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.437 et seq.

Specific Purpose:

This amendment adds language to appropriately place regulatory requirements related to requests for, and submissions of, additional information to process an incomplete rate application.

Factual Basis:

As a result of the biennial rate application regulation process, the regulation language for the Department to request additional information to process an incomplete rate application was moved from the program audits section (11-402.524(b)(1) through (3)) where it was incorrectly placed, to the correct location for this information. Therefore, the section citation numbering was changed from Sections 11-402.524(b)(1) through (3) to Sections 11-402.437(a) through (c) to correctly identify the citation move in the regulation language. This amendment is necessary for clarity of regulations and is made in accordance with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.441

Specific Purpose:

This section is amended to 1) include self reporting information in "any" rate application; and 2) delete the reference to the definition citation in these regulations as it is incorrect.

Factual Basis:

This amendment is necessary for clarity of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3). This amendment clarifies that information in "any" rate application that results in a failure to maintain the RCL as pertains to self reporting shall be subject to Section 11-402.443. Additionally, this section is deleting the citation to the definitions section for a rate application because the definition for a rate application is not in regulation. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.45

Specific Purpose:

This section is amended to allow the Department to rescind terminations up to the date of termination to facilitate operational efficiencies.

Factual Basis:

Currently, the Department is not able to withdraw or rescind terminations prior to the final date stated in the termination letter. Often the department receives the complete rate application documentation, although late, immediately after issuing a termination letter that indicates a final date for the program. This means that the Department and the provider have to wait until that final date to officially "terminate" and then "reinstate" the program. The ability to rescind the termination of the program up to the date of the termination, as stated in the termination letter to the provider, facilitates the operational efficiencies because there is no actual termination and therefore no need for reinstatement. This

amendment is necessary to facilitate the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.451

Specific Purpose:

This section is being amended to add a reference to Section 11-402.38 which contains revised penalty language prescribing rate termination, thereby necessitating its reference in this section. This section also deletes a specific regulation citation referencing reinstatements of terminated programs that have sustained overpayments.

Factual Basis:

This section describes program termination and reinstatement requirement citations and processes. This amendment adds reference to Section 11-402.38 which contains revised penalty language which applies to reinstatements. This amendment also deletes the section reference pertaining to reinstatement of terminated programs with sustained overpayments as these programs may not be reinstated unless overpayments are made in full. This section was intended to describe conditions that must be met for reinstatement. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.453 et seq.

Specific Purpose:

These sections are being amended to: 1) delete the reference to "fiscal year" and replace it with "current rate"; and 2) to delete the phrase, "at the lesser of" and replace it with the phrase, "in which the program is reinstated..." Additionally, Sections 11-402.453(a) and (b) are being deleted because Section 11-402.34 more appropriately addresses reinstatement and rate upon reinstatement.

Factual Basis:

Currently, rates established upon program reinstatement are set at the lesser of the rate prior to termination or the standard rate of the RCL at the time of the reinstatement because of the existing penalties being tied to a COLA. This amendment sets the rate for a reinstated program to the current rate for the rate classification level (RCL) to which the program is reinstated and takes into account the new penalty structure for a late or incomplete rate application. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.454 et seq.

Specific Purpose:

These sections are adopted to allow the Department to rescind a program termination up to the date of the termination as stated in the termination letter and clarify all penalties will apply and no rescission will be granted if the program is in mandatory repayment status.

Factual Basis:

At this time, the Department is not permitted to rescind a program termination and must wait until the date of the termination to reinstate a program which is a functional reinstatement. Allowing the Department to rescind the termination will facilitate operational efficiencies as the program will not be terminated and therefore there will be no need for reinstatement. This section also ensures that all penalties for late applications are applicable to rescissions and providers in mandatory repayment status are not eligible for a rescission (which is not a change from the current process). This amendment is necessary for clarity of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.5

Specific Purpose/Factual Basis:

This paragraph has been adopted to provide a "bridge" between final audit reports of program audits conducted before the biennial rate setting process and specify that those processes will be in accordance with the regulations in effect prior to the implementation of the biennial regulations. This adoption is necessary because many program (non provisional) audits require months and sometimes years to process through the administrative review associated with program audits.

Section 11-402.512(a)

Specific Purpose/Factual Basis:

This section is obsolete and applied only to program audits conducted for FY 1990-91. This amendment is necessary for clarity and consistency of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Handbook Section 11-402.513

Specific Purpose:

This amendment deletes the number reference in handbook section. This section also deletes the reference to a revision date for Government Auditing Standards.

Factual Basis:

This amendment is necessary for clarity and consistency as regulatory numbering is not required in handbook section and the deletion of handbook numbering has been consistent in this regulation package. This amendment also removes the reference to the issue date of the Government Auditing Standards as this publication is frequently updated and current editions are used by auditors, as appropriate, for audit purposes.

Section 11-402.514 [Renumbered to Section 11-402.513]

Specific Purpose/Factual Basis:

This section is being renumbered because of the prior deletion of the number in handbook. MPP Section 11-402.514 is now 11-402.513. This section also deletes the revision date of the Government Auditing Standards publication as this publication is frequently updated and current editions are used by auditors, as appropriate, for audit purposes.

Section 11-402.524

Specific Purpose:

This amendment deletes language that is reiterated in Section 11-402.525 or elsewhere throughout these regulations. Parts of the entire Section have been moved and renumbered as they are not consistent with the section topic and are more appropriately placed in the correct section.

Factual Basis:

This amendment is necessary for clarity and avoids duplication. Section 11-402.524 states that "a group home provider shall provide or allow the Department access to group home program records needed to establish a rate pursuant to a rate application,..." Sections throughout these regulations describe the information required for a complete rate application which enables the Department to establish a rate. The other requirements stated in this section are reiterated in Section 11-402.525. Therefore, this section is being repealed for purposes of clarity.

Section 11-402.524(a)

Specific Purpose:

This section is repealed as it refers to submission of an annual rate application for a rate effective for the next fiscal year. Section 11-402.52 pertains to records maintenance for purposes of program auditing and the language in this repealed section pertains to submission of documents for a rate application. This information is incorrectly placed and has been moved and this section repealed.

Factual Basis:

Due to the regulatory changes necessitated by enactment of Welfare and Institutions Code Section 11462(a)(3), providers must now submit information for a biennial rate effective for the next rate period. This section is repealed as it is obsolete and the deletion is necessary for clarity of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.524(b)

Specific Purpose:

This section is repealed as it refers to "existing group home providers submitting a rate application for a new program or program change or new group home provider submitting a rate application for a new program ..." Section 11-402.52 pertains to records maintenance for purposes of program auditing and the language in this repealed section pertains to submission of documents for a rate application. This information is incorrectly placed and has been moved and this section repealed.

Factual Basis:

Due to the regulatory changes necessitated by enactment of Welfare and Institutions Code Section 11462(a)(3), providers must now submit information for a biennial rate effective for the next rate period. This section is repealed as it is obsolete and is necessary for clarity of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.524(b)(1) through (3)

Specific Purpose:

These amendments delete language regarding requests for and submission of additional information which have been relocated to Section 11-402.437(a) through (c).

Factual Basis:

These amendments are necessary for clarity and consistency. These requirements were erroneously placed in this part of the regulations that have nothing to do with submitting rate applications; therefore, the section was moved to 11-402.437(a) through (c). The placement of this information in this section did not allow users of the regulations to easily locate them or know the provisions were available or existed. It is necessary to have a comprehensive and understandable regulatory scheme available to the individuals who are subject to its requirements.

Section 11-402.525 [Renumbered to Section 11-402.524]

Specific Purpose:

This section is amended to correctly renumber the section as a result of deleting Section 11-402.524. This section is also amended to allow the Department continuing access to group home records. Access to group home records was initially found in parts of Sections 11-402.524 and 11-402.524(b). These sections have been deleted and renumbered. This amendment is necessary as these requirements for access continue to be applicable to the rate application and rate setting process.

Factual Basis:

This section maintains language that continues to allow the Department to access group home records needed to establish a rate, continue a rate, conduct a program audit, collect overpayments, evaluate cost data reported by the provider, and/or conduct a fiscal audit. The original section where this information was cited has been deleted and a portion of the section moved to a more appropriate location. This amendment is in accordance with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.526(a) [Renumbered to Section 11-402.525(a)]

Specific Purpose:

This amendment renumbers this section as a result of the deletion of Section 11-402.524 and updates the regulation citation that was changed because of the deletion of Section 11-402.524.

Factual Basis:

This amendment is necessary for clarity of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3). The section notifies the provider that denial of immediate access to group home program records will result in rate termination.

Sections 11-402.527(c) and (d) [Renumbered to Sections 11-402.526(c) and (d)]

Specific Purpose/Factual Basis:

Section 11-402.526(c) is amended to renumber the section as a result of the deletion of Section 11-402.524. This amendment also deletes the revision date of the SR 5 as forms information is now contained in Section 11-406; and, Section 11-402.526(d) is amended to correct a typographical error. These sections are being amended to provide regulatory consistency and clarity of regulations. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.531(b)(1)

Specific Purpose/Factual Basis:

This section is amended to add the word "provider" to distinguish a provider's fiscal year, from the State fiscal year, for purposes of conducting non provisional program audits. Because providers will be submitting information and receiving a rate based on a biennial rate period, it is necessary for clarity to ensure that these audits will be conducted based on the provider's fiscal year rather than the State fiscal year. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.531(b)(2)

Specific Purpose:

This amendment deletes reference to Section 11-402.531(b)(3) because it has been repealed within this regulation package. This amendment also updates regulation section citations used to determine reporting accuracy because Section 11-402.239 was repealed. Section 11-402.531(b)(3) is being repealed because it is no longer applicable.

Factual Basis:

This amendment provides clarity and consistency in regulations. Section 11-402.53 informs providers of the Department's process of conducting program audits. Program audits (provisional and non provisional programs) are currently conducted by reviewing the provider's report of the actual RCL and program information for the audit period. Because rates are now established for a biennial period, the program information used for the audit period is important for auditing purposes. Section 11-402.531(b)(3) is being repealed in this regulation package and this amendment updates the reference for sections referencing point computation. The update to the reference citation is required because of repeals to regulations elsewhere in these regulations (Section 11-402.239 was repealed). Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.531(b)(3)

Specific Purpose/Factual Basis:

This section is repealed because it is no longer applicable as it refers to recomputing hours for a Community Treatment Facility (CTF) and to conducting program audits prior to July 1, 2002. Because rates are now established for a biennial period, the program information used for the audit period is important for auditing purposes. This amendment is necessary for clarity of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.531(b)(4) and (b)(5) [Renumbered to Sections 11-402.531(b)(3) and (b)(4)]

Specific Purpose/Factual Basis:

These sections are being renumbered as a result of repealing Section 11-402.531(b)(3). This amendment is necessary for clarity of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.531(b)(6) and Handbook [Renumbered to Section 11-402.531(b)(5)]

Specific Purpose/Factual Basis:

This amendment renumbers this section to reflect the deletion of Section 11-402.531(b)(3). This amendment also corrects a Welfare and Institution Code citation in handbook material and provides consistency and clarity of regulations. This amendment pertains to audits conducted for group home programs classified at RCL 13 and 14 and the correct citation is found in 11-402.531(b)(5); however, part of the citation is missing in the handbook section. This amendment is necessary for clarity of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.531(b)(7) [Renumbered to Section 11-402.531(b)(6)]

Specific Purpose/Factual Basis:

This section is renumbered as a result of repealing Section 11-402.531(b)(3). This amendment is necessary for clarity of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.531(c)(2) et seq.

Specific Purpose/Factual Basis:

These sections are being deleted in its entirety because the information is obsolete as it refers to children being certified in RCL 13 or 14 placement during the 1991/92 Fiscal Year. Because rates are now established for a biennial period, the program information used for the audit period is important for auditing purposes. This repeal is necessary for regulation clarity and consistency and is in accordance with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.552(c) through (f)

Specific Purpose/Factual Basis:

These amendments are made to delete the revision date reference to the forms required for corrective action. The revision dates on forms required by these regulations have been placed in Section 11-406 with the revision dates to facilitate future changes to the forms. These amendments are necessary for clarity of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Handbook Section 11-402.561

Specific Purpose/Factual Basis:

This handbook section referencing Welfare and Institutions Code Section 11466.2(b)(2) is being amended to correctly reflect the amendments made to this Welfare and Institutions Code Section pursuant to AB 1752, Chapter 225, Statutes of 2003. The phrase "Beginning in fiscal year 1990-1991" has been deleted from Welfare and Institutions Code Section 11466.2(b)(2). This amendment is necessary for clarity of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.562

Specific Purpose/Factual Basis:

This amendment deletes the reference to "Beginning with fiscal year 1990-91" as it is obsolete language. The phrase "Beginning in fiscal year 1990-1991" has been deleted from Welfare and Institutions Code Section 11462(a)(3) pursuant to AB 1752, Chapter 225, Statutes of 2003. This amendment is necessary for clarity of regulations to implement the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.562(b)

Specific Purpose:

This section is being amended to delete the word "annual" and replace it with the word "on-going" in order to distinguish the new biennial process from the obsolete annual process and other types of rate setting processes for purposes of audit adjustments.

Factual Basis:

Currently, the Department adjusts audit findings of group home program audits pursuant to Welfare and Institutions Code Section 11466.2(b)(2) which allows modifying overpayment amounts in cases where services provided to children is proportionate to the programs' RCL. Deleting the reference to "annual" and replacing it with the word "on-going" is necessary for clarity and consistency to implement the biennial rate process contained in Welfare and Institutions Code Section 11462(a)(3). Since providers will be held

accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.562(d)

Specific Purpose/Factual Basis:

This section repeals the reference to the revision date of the SR 2 form required for an audit adjustment. The revision dates of required forms have been deleted from the body of the regulations and all forms with revision dates are placed in Section 11-406 for clarity and consistency.

Handbook Section 11-402.623

Specific Purpose/Factual Basis:

This section is amended to delete the regulation number in handbook. Regulatory numbering is not required in handbook and it is consistent with clarity changes made throughout this regulation package. This correction is necessary to maintain the accuracy of the regulations and since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.624 [Renumber to Section 11-402.623]

Specific Purpose:

This section is being amended to delete the word "annual" and replace it with the phrase "on-going group home program rate" application as pertains to overpayments. Additionally, this section is renumbered to reflect the deletion of the number .623 from the Handbook section (above).

Factual Basis:

This amendment is deleting the reference to "annual program application" and replacing it with the phrase "on-going group home program rate" and is necessary for clarity and consistency to implement the biennial rate determination process contained in Welfare and Institutions Code Section 11462(a)(3). Additionally, this section is renumbered from 11-402.624 to 11-402.623 to reflect the deletion of the Section number 11-402.623 in handbook. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.625 through .629 [Renumbered to Sections 11-402.624 through .628]

Specific Purpose/Factual Basis:

These sections are being renumbered for numerical consistency as a result of deleting Section number 11-400.623 in handbook.

Section 11-402.631

Specific Purpose:

This section in Overpayments is being amended to delete the phrase "annual rate application" and replace it with the phrase "on-going group home program rate application" to ensure consistency within the regulations.

Factual Basis:

Currently, the Department determines overpayments through provider information related to the rate applications. Deleting the reference to "annual rate application" and replacing it with the phrase "on-going group home program rate application" is necessary for clarity and consistency to implement the biennial rate determination process pursuant to Welfare and Institutions Code Section 11462(a)(3). Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.633

Specific Purpose:

This section corrects reference to Welfare and Institutions Code Section examples in handbook within the regulations where providers may reference information regarding expenditure of AFDC-FC programs funds on items that are unallowable and therefore not listed in the handbook sections of these regulations.

Factual Basis:

It is important that the provider be referenced to the correct handbook examples of Welfare and Institutions Code sections provided in this regulation. This section correction is necessary for clarity and consistency to implement the biennial rate determination process pursuant to Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.642(a)

Specific Purpose:

This section is amended to correctly identify the beginning date of an overpayment as the first day of the provider's fiscal year within the audit period as opposed to July 1 of the affected fiscal year. This amendment is necessary as providers are identifying their corporate fiscal year for purposes of setting biennial rates which may not begin on July 1.

Factual Basis:

This section correction is necessary for clarity and consistency to implement the biennial rate determination process pursuant to Welfare and Institutions Code Section 11462(a)(3). Specifically, this section identifies the overpayment processing, therefore identification of the beginning date of the provider's fiscal year in determining the date of an overpayment is important for providers. Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Handbook Section 11-402.644

Specific Purpose/Factual Basis:

This section is amended to delete the regulatory number from handbook section. Handbook does not require regulatory numbering. This section correction is necessary for clarity and consistency and it is consistent with clarity changes made throughout this regulation package. This correction is necessary to maintain the accuracy of the regulations and since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.663, .663(a) and .663(a)(1)

Specific Purpose/Factual Basis:

These sections are being amended to accurately reflect the cited regulation "11-400r.(5)" to now read "11-400r.(7)" and "11-400o.(3)" to now read "11-400o.(4)." These sections are being amended to accurately reflect reference citations to the definition section pertaining to repayment agreements and define overpayment. This renumber is due to additions and deletions within the definitions sections which were renumbered in this package, to correctly reflect implementation of the biennial rate application and determination process as required by Welfare and Institutions Code Section 11462(a)(3).

Handbook Section 11-402.663(a)(2)

Specific Purpose/Factual Basis:

The handbook is amended to delete the reference letter (a) within Welfare and Institutions Code Section as this letter reference is not in the code and may be confusing to a provider who is referencing this section. This section is being amended to correct a typographical error within handbook and is necessary to provide clarity and consistency with other amendments made to these regulations and to implement the biennial rate determination process in accordance with Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.663(c)(3)

Specific Purpose:

This section is adopted to ensure clarity regarding the interest rate on overpayments. Additionally, this addition ensures fairness and consistency for all providers regarding setting the interest rate and accrual on the date of the issuance of the Final Audit Report.

Factual Basis:

Currently, the Department practice has been to set the interest rate at the end of the fiscal period audited. Now that the reporting/auditing periods will be tied to the provider's fiscal/reporting period, and not the State's fiscal year, the interest is tied to the accrual period in existing statute. Existing statute is in Welfare and Institutions Code 11466.25 which states that the accrual begins on the date of the issuance of the Final Audit Report (FAR). This is fair and consistent for all providers and is consistent with existing law in Welfare and Institutions Code 11466.25.

Section 11-402.663(f)(2)

Specific Purpose/Factual Basis:

This section corrects a regulation citation typographical error. This citation should refer the provider to the section on repayment agreements; however, this citation refers the provider to a section that does not exist. This amendment corrects the citation and is necessary to provide clarity and consistency with other amendments made to these regulations and to implement the biennial rate determination process in accordance with Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.664(a)(1)

Specific Purpose/Factual Basis:

This amendment correctly identifies a regulation citation in definitions pertaining to overpayments. The citation changed due to corrections and/or additions to the definitions section. This amendment corrects the citation within this section and is necessary to

provide clarity and consistency with other amendments made to these regulations and to implement the biennial rate determination process in accordance with Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.667(a)

Specific Purpose:

This section in overpayment collection is being amended to delete the word "Annual" and replace it with the word "On-going."

Factual Basis:

Currently, this section identifies that a provider who has a rate termination cannot be eligible to receive a rate for any group home program until all overpayments are repaid. Because providers are submitting information for a two-year period, deleting the reference to "Annual" and replacing it with the word "On-going" is necessary for clarity and consistency to implement the biennial rate determination process pursuant to Welfare and Institutions Code Section 11462(a)(3). Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.669

Specific Purpose/Factual Basis:

This section is being amended to: 1) correct the erroneously cited regulation "Sections 11-402.33" to now read "Sections 11-402.393"; and 2) delete the letters "(a), (b), and (d)". This amendment is necessary to correct an erroneously cited regulation for the rate termination process for group homes. It is essential to reflect an accurate reference to the rate termination process to ensure precise determination and is necessary for consistency with Welfare and Institutions Code Section 11462(a)(3). Since providers will be held accountable to these regulations under the biennial process, this amendment is needed for consistency with the provisions of Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.82

Specific Purpose/Factual Basis:

This section is amended to correctly identify regulation section citations that pertain to reported and allowable costs for group home providers. These section citations have been changed in this regulation package as a result of the handbook number deletion of 11-402.821 and the subsequent renumbering required. This amendment identifies the citations within regulation that identify actual, allowable and reasonable costs and is necessary to provide clarity and consistency with other amendments made to these regulations and to implement the biennial rate determination process in accordance with Welfare and Institutions Code Section 11462(a)(3).

Handbook Section 11-402.821

Specific Purpose/Factual Basis:

This handbook section is amended to delete the regulatory numbering within the handbook and is necessary to provide clarity and consistency of numbering in the printed regulations which do not include numbering in handbook sections.

Sections 11-402.822 through .824 [Renumbered to 11-402.821 through .823]

Specific Purpose/Factual Basis:

This amendment renumbers the regulations as a result of deleting the regulatory numbering from the handbook Section of 11-402.821. This amendment corrects the citation and is necessary to provide clarity and consistency with other amendments made to these regulations and to implement the biennial rate determination process in accordance with Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.824(a) et seq.

Specific Purpose/Factual Basis:

These sections are repealed. State Attorney General's Charitable Trust Section no longer requires a review and approval of shelter costs as self-dealing transactions are no longer allowed as a result of amendments to Welfare and Institutions Code Section 11462.06(d)(1) and (d)(2).

Section 11-402.825 [Renumbered to Section 11-402.824]

Specific Purpose:

This section correctly identifies the regulation reference number as changed within Section 11-402.82. The specific reference to reasonable costs incurred for vehicle and equipment leases is identified in Section 11-402.827(b). This amendment also renumbers this section from 11-402.825 to 11-402.824 as a result of the repeal of Section number 11-402.821.

Factual Basis:

This amendment correctly identifies the citation change due to repeal of Handbook Section number 11-402.821. This amendment also renumbers this section which is necessary to provide clarity and consistency with other amendments made to these regulations and to implement the biennial rate determination process in accordance with Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.826 and .826(i) [Renumbered to Section 11-402.825 and .825(i)]

Specific Purpose/Factual Basis:

This amendment renumbers Section 11-402.826 to 11-402.825 and corrects a cross reference citation changed due to the deletion of handbook numbering and the renumber of Sections within 11-402.82.

Section 11-402.825(l)

Specific Purpose:

This amendment adds a section to reflect language recently added to Welfare and Institutions Code Section 11462.06(d)(1) (SB 1104, Chapter 229, Statutes of 2004) that prohibits self-dealing lease transactions for shelter costs.

Factual Basis:

This amendment adds reference to Welfare and Institutions Code Section 11462.06(d)(1), that prohibits self-dealing lease transactions for shelter costs. Because providers are required to submit information for a biennial period, it is important for the Department and the provider to apply existing statutory requirements in order to be eligible for an AFDC-FC rate. This amendment is necessary to provide clarity and consistency with other amendments made to these regulations and to implement the biennial rate determination process in accordance with Welfare and Institutions Code Section 11462(a)(3).

Handbook Section 11-402.825(l)

Specific Purpose:

This handbook section is added to provide the language of the Welfare and Institutions Code Section that was added by SB 1104, Chapter 229, Statutes of 2004, prohibiting self-dealing lease transactions for shelter costs.

Factual Basis:

Addition of this handbook section is necessary to provide the reference for existing statutory requirements in order to be eligible for an AFDC-FC rate and provide clarity and consistency with Welfare and Institutions Code sections to assist in implementing the biennial rate determination process in accordance with Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.827 and .827(a) and (b) [Renumbered to Sections 11-402.826 and .826(a) and (b)]

Specific Purpose/Factual Basis:

These sections are renumbered, delete reference to revision dates on required forms and correctly identifies regulatory citations that were changed as a result of additions or deletions elsewhere in this regulation package. These amendments are necessary to provide clarity and consistency with other amendments made to these regulations and to implement the biennial rate determination process in accordance with Welfare and Institutions Code Section 11462(a)(3).

Section 11-402.826(i)

Specific Purpose/Factual Basis:

This section deletes the reference to "telegraph" because it is obsolete language. This amendment is necessary to provide clarity and consistency with other amendments made to these regulations and to implement the biennial rate determination process in accordance with Welfare and Institutions Code Section 11462(a)(3).

Sections 11-402.828, .828(a)(1)(B) and .828(b)(2) [Renumbered to Sections 11-402.827, .827(a)(1)(B) and .827(b)(2)]

Specific Purpose/Factual Basis:

These sections are renumbered and updated are the references for shelter costs information and annual vehicle costs that were renumbered as a result of deletions and additions elsewhere in this regulation package. These amendments are necessary to provide clarity and consistency with other amendments made to these regulations and to implement the biennial rate determination process in accordance with Welfare and Institutions Code Section 11462(a)(3).

Section 11-403(a)(1)(B)

Specific Purpose:

This section is being amended to correct a cross reference. The amendment changes the citation "11-403(d)(1)(A)(i)" to now read "11-403(d)(1)(B)."

Factual Basis:

Section 11-403(d)(1)(A)1. is being renumbered in this package to 11-403(d)(1)(B) and therefore this amendment is necessary for ease of locating and identifying the basic rate in order to determine foster family agency rates. It is essential to reflect an accurate reference for the basic rates to ensure precise rate determination and is necessary for consistency with Welfare and Institutions Code Section 11463(i).

Section 11-403(b)

Specific Purpose:

This section is being amended to add the Welfare and Institutions Code Section citations for rate ceilings for Foster Family Agencies.

Factual Basis:

This amendment is necessary for clarity and consistency in the regulations. This addition of Welfare and Institutions Code Section citations for the rate ceiling for foster family agency rates is essential to reflect an accurate reference for rate ceilings and is necessary for consistency with Welfare and Institutions Code Section 11463(i).

Handbook Section 11-403(b)(1)

Specific Purpose/Factual Basis:

This handbook section is being deleted as the language in Welfare and Institutions Code Section 11463 was amended by AB 1752, Chapter 225, Statutes of 2003, and therefore not consistent with current statute. Welfare and Institutions Code sections pertaining to rate ceilings are referenced in Section 11-403(b). It is essential to reflect an accurate reference for the basic rates to ensure precise rate determination and is necessary for consistency with Welfare and Institutions Code Section 11463(i).

Section 11-403(d)(1)(A)

Specific Purpose:

This section is being amended to identify the correct citation for the basic rate which was changed for clarity and consistency, and amend language to clarify that there is an additional increment for the child and correct the amount of the increment.

Factual Basis:

These amendments are necessary to correctly identify the referenced section and to clarify that there is an additional increment for the child and updates the amount. Accurate rate determination regulations facilitate a successful transition from an annual to a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-403(d)(1)(A)1. [Renumbered to Section 11-403(d)(1)(B)]

Specific Purpose/Factual Basis:

This section provides for consistent numbering in the regulations and updates the current foster family agency basic rates as of July 1, 2001. Accurate rate determination regulations facilitate a successful transition from an annual to a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-403(d)(1)(B) [Renumbered to Section 11-403(d)(1)(C)]

Specific Purpose/Factual Basis:

This section is renumbered as a result of the renumbering of the previous section and adds language that updates the current amount of allowable social work services that are a part of the FFA basic rate. This amendment also deletes reference to calendar year, replacing with appropriate program fiscal year requirements, as a result of Welfare and Institutions Code Section 11463(i).

Section 11-403(d)(1)(C) [Renumbered as Section 11-403(d)(1)(D)]

Specific Purpose/Factual Basis:

This section is renumbered as a result of the renumbering of the previous section and identifies within the section cross referenced and renumbered sections for calculation of recruitment, training and administration. Accurate rate determination regulations facilitate a successful transition from an annual to a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Handbook Section 11-403(d)(1)(D)

Specific Purpose:

This amendment eliminates the numbering in the handbook section because regulatory numbering is not required in handbook. The handbook has also been amended to reflect the new fiscal year and corresponding dollar amounts for each rate component within the example.

Factual Basis:

Rates were changed in accordance with SB 739 (Chapter 106, Statutes of 2001) which provided an appropriation for a 4.85 percent cost-of-living adjustment (COLA) for Foster Care Programs. This amendment is necessary for clarity and consistency in ensuring the correct rates are reflected and utilized for determining payment to certified foster family homes. Accurate rate determination regulations facilitate a successful transition from an annual to a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-403(f)

Specific Purpose/Factual Basis:

This section is amended to add "On-going Foster Family Agency" to the section title. This is necessary to reflect current changes that modify the rate request process to the biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-403(f)(1)(B)1.a. through h.

Specific Purpose:

These sections are being adopted to provide a list of the mandatory forms and documentation that must be completed and submitted by the foster family agency in order to have a rate set by the Department for a biennial rate in accordance with the provisions of Welfare and Institutions Code Section 11463(i).

Factual Basis:

Adoption of these sections is critical to give providers a convenient list of the mandatory forms and documents required for the submittal of a complete foster family agency rate request. These are forms that are currently required by the Department. Providers need a reference of all the compulsory rate request forms and documents to facilitate timely processing of rate requests and to promote a smooth transition to a biennial rate request process in accordance with the provisions of Welfare and Institutions Code Section 11463(i). These forms are not printed in the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are readily available from the Department.

Section 11-403(f)(1)(C)

Specific Purpose:

This section is being amended to delete an obsolete due date requirement applicable to the submittal of foster family agency rate requests. Further amendments add language that identifies that foster family agency rate requests shall be due according to a schedule determined by the Department. The Department shall provide reasonable written notice of the due date to the provider.

Factual Basis:

This amendment is necessary to provide the Department flexibility to determine the most efficient method of processing rate requests and subsequently determining rates in order to promote a smooth transition from an annual rate request to a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-403(f)(1)(C)1.

Specific Purpose:

This section is being amended to delete language related to late requests because of an obsolete due date. The amendment also includes language that identifies the consequences if a complete rate request is not submitted by the rate effective date.

Factual Basis:

This amendment is necessary for clarity and consistency with other amendments made to these regulations in order to implement a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i). The current regulatory language refers to a date in 1985 and is obsolete. The amendment also establishes that there is a rate request process with a rate effective date and adds language to make the process of rate setting for foster family agencies with late rate requests' consistent with those for group home providers.

Section 11-403(f)(1)(C)2.

Specific Purpose/Factual Basis:

This section is being repealed as the references and requirements are obsolete. The rate request process has been changed in accordance with Welfare and Institutions Code Section 11463(i). In order to provide consistency with other amendments made to these regulations, foster family agency providers will have a rate request process that will be consistent with the process for group home providers.

Section 11-403(f)(1)(D)

Specific Purpose/Factual Basis:

This section is being repealed. This deletion is necessary because the rate request due date of April 1st is no longer applicable and the new provision regarding the submittal of rate requests according to a schedule determined by the Department is now contained within Section 11-403(f)(1)(C). This amendment is necessary for clarity and consistency with other amendments made to these regulations in order to implement a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-403(f)(1)(D)1.

Specific Purpose/Factual Basis:

This section is being repealed because the dates of July 1 and September 1 are obsolete with the implementation of the biennial rate request process. In addition, the regulations pertaining to termination of the rate are now contained within Section 11-403(f)(1)(C). This repeal is necessary to be consistent with other amendments made within these regulations to implement a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Handbook Section 11-403(f)(1)(E)

Specific Purpose/Factual Basis:

The handbook, identified as subsection (E), is being deleted. The citation related to penalties is in Section 11-403(f)(3) and has been added to make penalty provisions for foster family agencies the same as those for group home providers. Elimination of the handbook is necessary for clarity and consistency with other amendments made to these regulations to implement a biennial rate request process in accordance with Welfare and Institutions Code Section 11-463(i).

Section 11-403(f)(1)(F) [Renumbered to 11-403(f)(1)(D)]

Specific Purpose/Factual Basis:

Existing subsection (F) is renumbered as subsection (D). Renumbering subsection (F) to subsection (D) is necessary for numbering consistency due to the deletion of Section 11-403(f)(1) subsections (D) and (E). These amendments are necessary for clarity and consistency in implementing Welfare and Institutions Code Section 11463(i).

Section 11-403(f)(2)(A)

Specific Purpose:

This section is being amended to: 1) delete an obsolete rate effective date of July 1; and, 2) provide the methodology for establishing rate effective dates.

Factual Basis:

Amending Section 11-403(f)(2)(A) is necessary for clarity and consistency with other amendments made to these regulations. Foster family agency rate requests are no longer required to be submitted each fiscal year and therefore the language must be consistent with the provisions of Welfare and Institutions Code Section 11463(i), which requires a provider to submit a foster family agency rate request biennially according to a schedule determined by the Department. In addition, this section describes the effective date of rates and makes it consistent with effective dates of rates for group home providers.

Final Modification:

Following the public hearing, Section 11-402.34 has been modified to clarify that the first day of the second month is the second "full" month of the effective date of the rate. This modification provides a clearer and more concise description while remaining consistent with the current law of a 60 day period between the due date and the effective date of the rate.

Handbook Section 11-403(f)(2)(A)

Specific Purpose/Factual Basis:

This handbook section is being added to provide an example of determining the rate effective date for foster family agency providers. In addition, this section describes the effective date of rates and makes it consistent with effective dates of rates for group home providers. The addition of this handbook section is necessary for clarity and consistency in implementing Welfare and Institutions Code Section 11463(i).

Sections 11-403(f)(2)(B) et seq.

Specific Purpose/Factual Basis:

Existing Sections 11-403(f)(2)(B) is being repealed. This repeal is necessary because the rate effective dates for foster family agencies submitting late rate requests without good cause will be consistent with group home providers, and late rate requests are subject to the penalty provisions in Section 11-403(f)(3) which is also consistent with group home provider requirements. Good cause late requests are addressed in Section 11-403(l).

Section 11-403(f)(2)(C) [Renumbered to 11-403(f)(2)(B)]

Specific Purpose/Factual Basis:

Existing Section 11-403(f)(2)(C) is renumbered to Section 11-403(f)(2)(B) to accommodate the deletion of Section 11-403(f)(2)(B) et seq. This amendment is necessary to provide consistency in numbering of the regulation sections.

Sections 11-403(f)(3) through (f)(3)(C)

Specific Purpose:

These sections are being adopted to outline the penalty procedures for submitting a late and/or an incomplete rate request or reinstatement after expiration or termination for foster family agency providers.

Factual Basis:

These procedures are consistent with penalty procedures for group home providers and are necessary for consistency in the rate application process. The existing penalty procedure had been predicated on the allocation of a cost of living adjustment (COLA) provided by the Legislature each fiscal year. Because of the change contained in Welfare and Institutions Code Section 11462(a)(3) to a biennial requirement, the existing penalty procedure created an inequity among providers depending on when submission of the application is required and whether a COLA is provided. This amendment creates a penalty procedure that is equitable to providers as it is not contingent upon a COLA, which may not be consistent rate period to rate period. The new penalty procedure was devised by averaging the past 10 years COLAs and rounding the figure and applies the same monetary penalties during a rate period. The amendment continues to promote program integrity by establishing a penalty intended to encourage providers to submit a timely rate application without unduly penalizing providers or depriving children in out-of-home care. This amendment is necessary to implement the provisions of Welfare and Institution Code Section 11462(a)(3).

Section 11-403(f)(3)(D)

Specific Purpose:

This section is being adopted to impose rate termination as specified in Section 11-403(f)(1)(C)1. for a foster family agency's failure to submit a rate request or submit sufficient documentation to set a rate.

Factual Basis:

Adoption of this section is necessary for the Department to effectively administer the biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i). This adoption also establishes the penalty procedure for failure to submit a rate request or submit sufficient documentation to set a rate and makes foster family agency procedures consistent with group home procedures.

Handbook Section 11-403(f)(3)(D)

Specific Purpose/Factual Basis:

This handbook section is being added to provide an example of the methodology to be utilized in calculating the three (3) percent penalty for the submission of late rate requests for foster family agency providers. The three percent penalty for agency providers is applied only to the administrative portion of the rate.

Section 11-403(f)(3) [Renumbered to 11-403(f)(4)]

Specific Purpose/Factual Basis:

Existing Section 11-403(f)(3) is being renumbered to Section 11-403(f)(4) and is necessary for numerical consistency due to the adoption of new Section 11-403(f)(3).

Section 11-403(f)(4)(A)

Specific Purpose:

This section is being amended to delete the words, "fiscal year" and adopt the phrase, "scheduled rate period" for which a foster family agency program rate may be reestablished and update a cross reference citation pertaining to the process for non submittal of a complete rate request by the rate effective date.

Factual Basis:

This amendment is necessary to specify that a foster family agency program rate may be reestablished for the remainder of the scheduled rate period, which is a biennial rate period, instead of for the remainder of the fiscal year when the Department determines that all applicable rate request requirements have been met. A foster family agency rate that has been terminated for failure to submit a complete rate application may be eligible for reinstatement under this section. This amendment is consistent with other changes within these regulations to implement a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-403(f)(4)(A)1.

Specific Purpose:

This section is being amended to: 1) delete the obsolete dates of July 1 and September 1; and 2) provide the methodology for determining the foster family agency's effective date for rate reestablishment following termination.

Factual Basis:

Amendments to this section are necessary for consistency with other amendments made to these regulations to implement the biennial rate request process in accordance with the provisions of Welfare and Institutions Code Section 11463(i). Because of the biennial rate process, the effective dates of rates are no longer consistent with July 1 and September 1 effective dates. This section defines the effective date of the rate as no earlier than the first day of the second month following the rate request due date.

Sections 11-403(f)(4)(A)2.(i) and (ii)

Specific Purpose/Factual Basis:

These sections are being amended to delete references to "fiscal year" and adopt the terms, "most recent rate" and "current rate" for the purpose of determining the reestablishment rate for foster family agencies that previously had their rate terminated. These amendments are necessary for clarity and consistency with other amendments made to these regulations to implement the biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-403(g)

Specific Purpose:

This section heading is being amended to read: "Deviations from the On-going Foster Family Agency Rate Request Process."

Factual Basis:

This amendment is necessary to maintain clarity and consistency with other amendments made to these regulations to implement the biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Sections 11-403(g)(1)(B)1. through (B)1.c.

Specific Purpose:

These sections are being adopted to establish the rate effective date for a new provider or for a new program which shall be the later of the submittal of a complete rate request, date the license was issued, or the date of first placement.

Factual Basis:

These adoptions are consistent with those for group home providers and provide continuity in the regulations and in the rate setting process. These adoptions are necessary for clarity and consistency with other amendments made to these regulations to implement the biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-403(l)(1)

Specific Purpose/Factual Basis:

This section is being amended to allow foster family agency providers to submit a written request for a determination of good cause and to specify that good cause requests shall be postmarked no later than five calendar days following the rate request due date, as opposed to within five calendar days. This allows some flexibility in the posting and receiving of the

good cause requests and is consistent with procedures and processes for good cause submittal for group home providers. These amendments are necessary for clarity and consistency to implement a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-403(l)(2)

Specific Purpose/Factual Basis:

This section is amended to give the Department some flexibility in receiving the request for good cause and is consistent with group home regulations for good cause timelines. This amendment is also necessary for consistency with the good cause timelines for fiscal and financial audits regulations which also allows for 15 calendar days of the postmarked date of a providers request for good cause extension.

Section 11-403(l)(2)(A)

Specific Purpose:

This section is being amended to: 1) delete the obsolete rate effective date of July 1; and 2) adopt the due date for a rate request if the Department determines that there is good cause for a foster family agency to submit a late or incomplete rate request.

Factual Basis:

These amendments are necessary to facilitate implementation of the provisions of Welfare and Institutions Code Section 11462(a)(3), and are an integral part of the revised good cause request process that is consistent with other amendments made to these regulations. Because the application due date has been amended, the July 1 due date is no longer applicable and the effective date of the rate shall be in accordance with Section 11-403(f)(4)(A)1. which states that "the effective date of the rate shall be the first day of the second month following the rate application due date" and is consistent with group home regulations for good cause timelines.

Section 11-403(l)(2)(B)

Specific Purpose:

This section is being amended to specify that if a complete rate request is not submitted by the good cause due date, the foster family agency shall be subject to the penalty provisions as specified in Section 11-403(f)(3).

Factual Basis:

This section describes the process for a late foster family agency rate request and identifies that the rate will be subject to the appropriate penalty procedures. This process is consistent with those for group home providers and is necessary for clarity and consistency to implement a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-403(1)(2)(C)

Specific Purpose:

This section is being amended to clarify the process to be followed when a good cause request is denied and specifies that the rate will be subject to the penalty provisions.

Factual Basis:

Amending this section clarifies that a provider shall be subject to the penalty provisions, as specified in Section 11-403(f)(3), when a good cause extension request has been denied and also identifies the section citation for the effective date of the rate. This amendment is consistent with group home regulations. This amendment is necessary for clarity and consistency to implement a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 1-406 et seq.

Specific Purpose/Factual Basis:

The forms listed in this section are incorporated by reference. These forms are not printed in CDSS' Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are readily available from CDSS.

Section 11-406(f)(3)

Specific Purpose/Factual Basis:

Adoption of this section is necessary to specify that the Foster Family Agency Data and Certification Sheet (FCR 1FFA) is a form currently used to collect information on general identifying information and licensing information. This adoption is necessary to add the form to the list of forms submitted by foster family agency providers with the biennial rate application. This form was modified to identify information on the Agency's Agent for Service of Process and the Board President. This form was revised to reflect essential elements to comply with a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-406(f)(4)

Specific Purpose/Factual Basis:

Adoption of this section is necessary to specify that the Foster Family Agency Days of Care Schedule (FCR 3FFA) is a form currently used to collect information on the number of clients the foster family agency has served each month for the rate application period. This adoption is necessary to add the form to the list of forms submitted by foster family agency providers with the biennial rate application. This form is revised to reflect essential elements in complying with a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-406(f)(5)

Specific Purpose/Factual Basis:

Adoption of this section is necessary to specify that the Foster Family Agency Program Description Checklist (FCR 2FFA) is a form currently used to collect information on the type of program offered by the foster family agency, client characteristics and client behaviors. This adoption is necessary to add the form to the list of forms submitted by foster family agency providers with the biennial rate application. This form was modified to delete obsolete terminology to the characteristics checklist and updates the form to comply with implementing a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-406(f)(6) [Renumbered from Section 11-406(t)(1)]

Specific Purpose/Factual Basis:

Amendment of this section is necessary to specify that the Foster Family Agency Total Program Costs Display (FCR 12FFA) is a form currently used to collect information on the Agency's program costs during the fiscal year for the biennial rate period. This amendment also relocates the form to this section from 11-406(t)(1) for consistency with the other required forms submitted by foster care providers with the biennial rate application. This form was revised to reflect implementing a biennial rate request in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-406(g)(1)

Specific Purpose/Factual Basis:

Amendment of this section is necessary to identify that the Group Home Program Cost Report (SR 3) is a form currently used to collect allowable and reasonable cost information for the group home program. This form was revised to update terminology that is consistent with the Group Home Program Payroll and Fringe Benefit Report (SR 4). This amendment also identifies an update in the revision date and is necessary to refer providers to the correct version of the form so that the data reported is consistent with current requirements.

This form has been revised to reflect compliance with a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-406(g)(2)

Specific Purpose/Factual Basis:

Amendment of this section is necessary to identify that the Group Home Program Days of Care Schedule (SR 5) is a form currently used to report historical or projected monthly data on the occupancy and licensed capacity of the group home program. This amendment identifies an update in the revision date and is necessary to refer providers to the correct version of the form so that the data reported is consistent with current requirements. This form was revised to reflect a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

Section 11-406(g)(3)

Specific Purpose/Factual Basis:

Amendment of this section is necessary to identify that the Group Home Program Payroll and Fringe Benefit Report (SR 4) is a form currently used to report allowable and reasonable costs on payroll and fringe benefits of the group home program. This form was revised to reflect a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i). This amendment also identifies an update in the revision date and is necessary to refer providers to the correct version of the form so that the data reported is consistent with current requirements.

Section 11-406(g)(4) [Renumbered from Section 11-406(p)(1)]

Specific Purpose/Factual Basis:

Amendment of this section is necessary to identify that the Group Home Program Classification Report (SR 2) is a form currently used to collect historical or projected monthly data regarding paid-awake hours (weighted and unweighted) of service to children in three program components and is used to calculate points based on weighted hours of service for the reporting period. This form was revised to reflect a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i). This amendment also rennumbers this form from 11-406(p)(1) to 11-406(g)(2) for consistency with other required forms used by group home providers as part of the biennial rate application and identifies an update in the revision date and is necessary to refer providers to the correct version of the form so that the data reported is consistent with current requirements.

Section 11-406(g)(5) [Renumbered from Section 11-406(g)(4)]

Specific Purpose/Factual Basis:

Amendment of this section is necessary to identify that the Group Home Program Rate Application (SR 1) is a form currently used to collect information on the group home program as one of the forms required as part of the biennial rate application process. This form was revised to reflect a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i). This amendment also identifies an update in the revision date and is necessary to refer providers to the correct version of the form so that the data reported is consistent with current requirements.

Section 11-406(g)(6)

Specific Purpose/Factual Basis:

Adoption of this section is necessary to specify that the Group Home Shelter Costs, Self-Dealing Transactions Declaration and Survey (FCR 16) is a form currently used to collect information on the number of facilities in the group home organization and the types of leases of those facilities. This section is being adopted to provide information on Welfare and Institutions Code Sections 11462.06(a) and (b), that states that effective July 1, 2003, any group home provider with a self-dealing transaction for shelter costs shall not be eligible for an Aid to Families with Dependent Children-Foster Care. This adoption is necessary to add the form to the list of forms used by foster care providers and is submitted by group home providers with the biennial rate application. Adoption of this section is necessary to specify that the FCR 16 is a regulatory form used by a non profit corporation to report shelter costs resulting from a self-dealing transaction. This amendment also updates the form to comply with implementing a biennial rate request process in accordance with Welfare and Institutions Code Section 11463(i).

b) Identification of Documents Upon Which Department Is Relying

- Assembly Bill 1752 (Ch 225, Statutes of 2003)
- Senate Bill 1104 (Ch 229, Statutes of 2004)

c) Local Mandate Statement

These regulations do impose a mandate upon local agencies but not upon school districts. The mandate is not required to be reimbursed pursuant to part 7 (commencing with Section 17500) of Division 4 of the California Constitution because implementation of the regulations will result in savings.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would lessen any adverse impact on small business.

e) Significant Adverse Economic Impact On Business

CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #1 at the public hearing held on September 14, 2005 in Sacramento, California. Written testimony was received from Douglas K. Johnson, Associate Executive Director, California Alliance of Child and Family Services during the 45-day comment period from July 29, to 5:00 p.m. September 14, 2005. The comments received and the Department's responses to those comments follow.

Sections 11-400c.(3) and c.(5)

1. Comment:

Employee Duty Statements and the Modifications of the Definitions for "Child Care and Supervision" and "Child Care Worker"

The emergency regulations add language to the definition of "child care and supervision" [Section 11-400 c. (3)] under which child care and supervision would have to consist "of the performance of duties identified as child care duties in the employee's duty statement." The emergency regulations also add language to the definition of "child care worker" [Section 11-400 c. (5)] under which a "child care worker" would have to be a group home employee "identified as a child care worker in the employee's duty statement."

We are concerned about the implications of including the reference to "the employee's duty statement" in these two definitions.

We understand that CDSS is concerned about group home programs in which a significant amount of the time worked by employees, whose duty statements make no mention of tasks or responsibilities which would fall under the definition of "child care and supervision," is being claimed on a regular and frequent basis as "paid-awake hours" of "child care and supervision" for the purposes of maintaining their Rate Classification Level (RCL) and their AFDC-FC payment rate. To the extent that this is occurring, we agree that it is appropriate for CDSS to take steps to ensure that there is substantial concurrence between employee duty statements and how the actual time worked by these employees is claimed for RCL points.

However, we believe that the modifications to the definitions for "child care and supervision" and "child care worker" go beyond what is necessary to deal with this legitimate CDSS concern.

There are many group homes which use a title other than "child care worker" for their employees who spend the majority or all of their time performing tasks which appropriately fall under the definition of "child care and supervision." The duty statements for these employees do not now identify them as "child care workers." They may be referred to as "counselors," "youth counselors," "houseparents," and a wide variety of other titles. If the modified definition of "child care worker" included in these emergency regulations is adopted as part of the final regulations, many of the private nonprofit agencies operating group homes will have to undertake a time-consuming, burdensome, and expensive review of all of their duty statements and modify them so that any employees who spend any of their work time performing "child care and supervision" duties are given the title of "child care worker." Many providers (particularly smaller providers and larger providers operating multiple six-bed facilities) have the same employee perform administrative tasks, social work activities, and/or first-line supervision of child care workers, as well as performing direct child care duties. These employees allocate, time-study, or otherwise document their time in these various categories. It would be inappropriate and misleading to adopt regulations which require such employees to be identified in their duty statements as "child care workers."

California Alliance Recommendation:

The modification of the definition of "child care worker" in [Section 11-400 c. (5)] is unnecessary to resolve the Department's legitimate concerns and should be eliminated from the final regulations.

The Department's legitimate concerns in this area are adequately addressed through modifications to the definition of "child care and supervision." However, the modified definition in the emergency regulations should be revised to reflect the realities of group home operations.

We agree with the Department's intent that the duty statements of group home employees who perform child care and supervision on a regular and frequent basis should include an appropriate description of the child care duties they actually perform. But, we have two specific concerns about the way in which the definition of "child care and supervision" has been modified in the emergency regulations.

Our first concern is that the definition of "child care and supervision," as been modified in the emergency regulations, does not take into account the fact that situations sometimes arise in which child care duties must be performed by other group home employees, such as administrators or social workers, for whom this is not a normal part of their workload and whose duty statements do not identify child care

tasks and responsibilities. These situations may arise under a variety of circumstances, including but not limited to::

- when a group home is experiencing an unusually high vacancy rate among its child care workers and first-line supervisors while they recruit to replace departing staff;
- when a group home is experiencing an unusually high level of sick leave or family leave;
- when a child care worker or first-line supervisors becomes sick at work, or calls in sick just before their shift is about to start, and other child care workers or first-line supervisors are not immediately available;
- when the care and supervision requirements for the children in the program change quickly and additional staff are needed quickly; e.g. one or more children become sick or injured and need a lot of attention or to be transported to receive medical care.

California Alliance Recommendation:

The California Alliance recommends that the definition of "child care and supervision" in the emergency regulations should be amended to include a provision under which time worked by group home employees performing child care duties should be counted for the purposes of determining a group home program's RCL points, even when their duty statements do not make a reference to child care tasks and responsibilities, as long as those employees do not perform child care duties on a frequent and regular basis.

Our second concern in this area is that the definition of "child care and supervision," as been modified in the emergency regulations, appears to limit the tasks and responsibilities which would qualify as "child care and supervision" to the activities listed under the definition of "care and supervision" in Title 22, Section 80001 (c) (3). All of the items on that generic list of activities from the Community Care Licensing General Licensing Requirements should certainly be included in the definition of "child care and supervision." But the definition of "child care and supervision" should not be confined to only that list of activities.

The definition of "child care and supervision" for group homes must cover the full and diverse range of tasks, activities, and responsibilities which parents perform on behalf of their own children because the child care workers must play the parental role for these children on a day-to-day basis while they are living in the group home. For example, while parents do not typically take on the formal role of a teacher, they commonly provide tutoring to their children for their school work. Parents also train their children in life skills and job skills, preparing them for emancipation as productive adults.

In addition, the scope of "child care and supervision" in group homes includes and goes beyond that played by parents under "normal" circumstances. It also includes activities which are played by parents with children who have special needs, including health, mental health, and behavioral issues. Parents will often obtain special training

in order to appropriately carry out those activities. For example, the parents of children with diabetes will often obtain training so that they are able to safely administer insulin injections to their children.

California Alliance Recommendation:

The California Alliance recommends that the definition of "child care and supervision" in the emergency regulations should be amended to add language which would include "other activities which are performed by parents, including activities performed by parents with children who special needs."

Response:

In reference to Section 11-400c.(3):

The Department would like to thank the testifier for their comments. Existing law only allows AFDC-FC payment for care and supervision, social work and mental health activities (Welfare and Institutions Code Section 11460(b)). The regulations and the August 30th letter referenced therein set forth definitions for each of three categories of services: child care, social work and mental health (MPP Section 11-402.211, .213, .237 and .331). The definition of "Daily Supervision" that was used previously in this regulation cross-referenced a currently nonexistent Title 22 regulation and replaced with the term "Care and Supervision." The appropriate Title 22 regulation that describes such services is "Care and Supervision." As such, this MPP section was merely updated to reflect this appropriate cross reference. To add language as suggested would broaden the scope of the original regulation by including activities not previously allowed and as such would be beyond the scope of this emergency regulation package.

In reference to Section 11-400c(5):

The Department would like to thank the testifier for their comments. The Department has considered the testifiers testimony and has determined that change to this regulation is warranted. The Department never intended for this regulation to be so prescriptive as to require that a duty statement identify the worker with the term "Child Care Worker." It is important, however, that a duty statement at least identify that an individual may, as part of their duties, perform child care type duties even if only identified as part of an "other duties as assigned including..." category. The Department does not believe that inclusion of such a statement in a duty statement represents an overly burdensome administrative requirement. In fact, providers should be aware of and have identified those individuals whom they might have fill in to perform these tasks on an emergency basis as not all provider employees would be qualified to perform such activities. As such, the language has been changed to read "identified as performing child care duties..." This language should allow sufficient flexibility within the daily group home operation to cover those employees/staff who may be performing child care duties "as needed," however do not regularly perform child care duties. The Department may consider these hours for audit purposes to the

extent that group home providers can demonstrate emergency conditions, or that the child care duties are not performed on a frequent and regular basis.

Sections 11-402.32 and Section 11-403(f)(1)(C)

2. Comment:

Rate Application Due Dates

Section 11-402.32 and Section 11-403 (f) (1) (C) in the emergency regulations indicate that the due date for biennial rate applications for group homes and foster family agencies (FFAs), respectively, will be "according to a schedule determined by the Department." Previously, under annual rate-setting, which was based on the calendar year, group homes had four months (until May 1), and FFAs had three months (until April 1), between the end of the fiscal period and the due date for rate applications. Under the biennial rate-setting process, each providers' fiscal year has become the basis for their rate application.

California Alliance Recommendation:

We urge the Department to adopt a timeframe of at least three months between the end of the fiscal period and the due date for rate applications. This is particularly important for providers which use the calendar year as their fiscal year. The accountants and consultants they used to help prepare their rate applications are extremely busy during the period prior to April 15th of each year in the preparation of income tax returns.

Response:

The Department would like to thank the testifier for their comment. No changes are being made to this regulation. The Department will keep this timeframe under consideration as it develops rate application submission schedules. However, the Department does not believe additional regulation in this area is warranted and believes that such may restrict the Department's ability to be flexible to providers in the future. Additionally, the Department has never regulated such timeframes in the past and as such does not believe that any new need has been created by this regulation for such specificity.

Section 11-402.381(b)

3. Comment:

Penalty for Late Applications

Section 11-402.381 (b) in the emergency regulation establishes a penalty of three (3) percent of the rate for late applications. Previously, the penalty for late applications was that such providers were denied the benefit of any cost-of-living adjustment (COLA) included in the State Budget for the fiscal year, based on the number of months their applications were late. The Department argues that this change in the penalty provision is necessary because AFDC-Foster Care rates have not received a COLA, or any other rate increase, in the last four years and therefore the penalty is not effective. The appropriate solution to that dilemma is to grant group home and FFAs COLAs which reflect the annual increases in their costs of doing business, not to change the penalty provision. In any case, a three (3) percent penalty seems inordinately high to achieve the Department's legitimate objective to create an incentive for the timely submission of rate applications.

California Alliance Recommendation:

The California Alliance recommends that the three (3) percent penalty for late applications should be eliminated or at least reduced to no more than 1 (one) percent.

Response:

The Department would like to thank the testifier for their comment. No change is being made to this regulation. Previous regulations allowed for a penalty for late submission of applications which was tied to an annual Cost of Living Adjustment (COLA). However, the applications are no longer submitted annually, but biennially with half the providers submitting in one year and the remaining providers in the next year. Therefore, the penalty was adjusted to allow for equitable application. This penalty was established by taking the average of the COLA's over a ten-year period which equated to about 3 percent. By establishing the penalty at this amount, it will ensure that the penalty is fairly applied to all providers regardless of the year of their application.

General Comment

4. Comment:

Additional Modifications to the Rate-Setting Regulations to Update the Group Home Rate-Setting System

These emergency regulations include a number of provisions which are intended to update the group home rate-setting system in general in order to take into account changing circumstances which have occurred since the current system was initially

implemented in 1990. These provisions go beyond the narrow and specific purpose of implementing Assembly Bill (AB) 1752 (Chapter 225, Statutes of 2003), which only required that CDSS change the system from one in which rates are established on an annual basis to one in which rates are established on a biennial basis.

Examples of such provisions of these emergency regulations include, but are not limited to:

1. a new definition for accredited schools, colleges or universities [Section 11-400 a. (1)];
2. a new definition for approved schools, colleges or universities [Section 11-400 a. (2)];
3. the modification of the existing definition for "child care and supervision" [Section 11-400 c. (3)];
4. the modification of the existing definition for "child care worker" [Section 11-400 c. (5)];
5. the modification of the existing definition for "group home administrator certificate" [Section 11-400 g. (3)]; and
6. a new definition for "licensed marriage, family therapist" [Section 11-400 l. (5)];

Response:

The Department would like to thank the testifier for their comments. However, the Department does not concur that any of the regulations contained in this package go beyond the specific purpose of implementing the biennial rates system mandated by Assembly Bill (AB) 1752 (Chapter 225, Statutes of 2003). Rather, the Department believes that all the regulation changes contained in this package are necessary for the proper implementation and understanding by providers of the new biennial rates process. With respect to the commentors examples, the Department offers the following:

Items 1 and 2: These are not new definitions. Existing regulations define formal education as education obtained from an accredited or approved institution. The definitions of accredited and approved are currently defined for group home providers in Title 22 , Division 6, Chapter 5, Sections 84001(a)(1) and (2). The definitions have been incorporated in the rate regulations for ease of access for the individuals subject to this regulation and to assure that this important information is not overlooked in the submission of the provider's biennial application. This incorporation provides clarity and consistency with existing regulations.

Items 3 and 4: These were addressed earlier in the Department's response to Comment #1.

Item 5: This is a current requirement and is a necessary component to the submission of the biennial application. The new definition has been incorporated in the rate regulations for ease of access and to assure that this important information is not overlooked in the submission of the provider's biennial

application. This incorporation provides clarity and consistency with existing regulations.

Item 6: The change reflects the Business and Professions Code change to the name of the professional. The new definition has been incorporated in the rate regulations for ease of access to the individuals subject to this regulation and to assure that this important information is not overlooked in the submission of the provider's biennial application. This incorporation provides clarity and consistency with existing regulations.

Comment: (con't)

There are many other examples which could be cited, but the ones mentioned above illustrate our basic point that CDSS is using this regulation package to implement a variety of changes to the rate-setting regulations in response to the changing external environment in which it operates.

While we have made comments regarding the specific details of a couple of these changes, we want to emphasize that the California Alliance does not oppose the inclusion of such changes in these emergency regulations. However, since CDSS has chosen to use a rather expansive interpretation with regard to the scope of the changes needed to implement biennial rate-setting under the authority of AB 1752, we believe that this regulation package offers CDSS an opportunity which it should use to make additional modifications which are necessary to update and improve the rate-setting system in response to the changing external environment in which it operates.

Listed below is a set of recommended additional modifications to the existing regulations. As stated in the Notice of Proposed Changes in Regulations to the California Department of Social Services (CDSS), "CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or ***may modify such proposals if such modifications are sufficiently related to the original text.***" [*Emphasis added.*] We believe that our recommendations below are directly related to the process by which biennial rates are established for AFDC-Foster Care payments to group homes and are thereby sufficiently related to the original text of these emergency regulations which is intended to implement that biennial rate-setting process.

The current group home rate-setting system, and the regulations under which it operates, are based on the valid premise that the education, experience, training, and professional qualifications of the child care and social work staff are the most important factors in determining the level and quality of care and services delivered to the children and the reasonable costs which will be incurred by a private nonprofit agency in operating a group home program. Since this rate-setting system was initially implemented in 1990, it has become apparent that there are many deficiencies in the way in which the RCL point mechanism measures these factors. Our specific recommendations below for additional modifications to this emergency regulations

package are designed to ameliorate or reduce some of these deficiencies in a manner that does not increase State or county general fund costs.

California Alliance Recommendations for Specific Additional Modifications:

1. The subsequent provisions regarding the RCL point mechanism should only be applicable for existing programs with non-provisional rates. They could not be used for the purposes of RCL point computation by new providers or programs, or by existing group home programs making changes which would result in an increase their RCL and their AFDC-Foster Care rate.

This would ensure that these provisions would not increase State or county general fund costs in the current year or in the out-years.

2. For child care staff with a total of 6 or more years of relevant experience, an additional RCL weighting for Prior Experience of 0.35 should be added.

Currently, the RCL weighting category for experience tops out at four years or more. We know that individuals who have worked with children in group care, and in related fields, continue to gain valuable experience well beyond four years and that this improves their effectiveness in providing care and supervision to these children. Further, with their higher levels of experience, such individuals are able to obtain higher pay levels, which increases the costs of group home operations.

3. For child care staff with 6 or more years of experience in the same nonprofit agency operating the group home program where they currently work, an additional RCL weighting for Prior Experience of 0.40 should be added. This 0.40 RLC weighting would be instead of, not in addition to, the 0.35 RCL weighting mentioned in Recommendation #2 above.

Currently, there is no recognition whatsoever in the RCL point mechanism for the retention of child care staff by group home programs. In addition to having adequately educated, experienced, and trained staff, the delivery of high-quality care and services also requires stable staff. This is true for all types of residential care. But, it is particularly important in for group home programs which serve children who almost always have experienced a great deal of disruption in their young lives and who specifically need a stable living environment, one of the most important features of which is stable staff. In order for group home programs to retain their child care staff and thereby enhance stability, they must pay higher wages and/or provide more benefits, which increases the costs of group home operations.

4. For social workers with 6 or more years of employment with the same nonprofit agency operating the group home program where the social worker is currently employed, an additional RCL weighting of 0.40 for longevity of employment should be added. This 0.40 RLC weighting would be added to the weighting

social workers receive based on their professional qualifications. Only social workers employed for the nonprofit agency operating the group home program would be eligible to receive this additional weighting for longevity of employment; those working as independent contractors would not qualify for it.

Currently, the RCL point mechanism only considers the professional qualification level of social workers. There is no recognition whatsoever in the RCL point mechanism for prior experience or for longevity of employment with the same agency. As discussed under the Recommendation #3 for child care staff, the stability of the social work staff in an agency is an important factor in the delivery of high-quality services that meet the needs of the children. In order for group home programs to retain their social work staff and thereby enhance stability, they must pay higher wages and/or provide more benefits, which increases the costs of group home operations.

5. Individuals who have Master's degrees which fall under the current definition used in the AFDC-Foster Care rate-setting regulations for a "social worker," but which do not now qualify for any RCL weightings based on their professional level qualifications, should be given an RCL weighting of 1.0.

Currently, the RCL point mechanism provides no recognition whatsoever for the valuable social work activities performed for the children by these qualified Master's degree level professionals. As a result, the legitimate costs incurred by the group home programs for the delivery of these social work activities by such qualified professionals is also totally unrecognized.

Response:

The Department thanks the testifier for their comments. No changes are being made to these regulations to incorporate the testifier's suggestions. The suggestions made by the Alliance are beyond the scope of these emergency regulations and as such cannot be considered in this context.

g) 15-Day Renotice Statement

Pursuant to Government Code Section 11346.8, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. Written testimony on the modifications renoticed for public comment from October 26 to November 9, 2005 was received from Douglas K. Johnson, Associate Executive Director, California Alliance of Child and Family Services. The comment received and the Department's response to that comment follows:

Section 11-400c.(3)

1. Comment:

In our previous comments on Section 11-400 c.(3) of the emergency regulations, dated September 14, 2005, we recommended that the definition of "child care and supervision" in the emergency regulations should be amended to add language which would include "other activities which are performed by parents, including activities performed by parents with children who have special needs."

The Department declined to make the recommended change.

In responding to our comments and recommendation on Section 11-400 c.(3) in the Final Statement of Reasons, the Department stated that:

"Existing law only allows AFDC-FC payment for care and supervision, social work and mental health activities (Welfare and Institutions Code Section 11460(b)). The regulations and the August 30th letter referenced therein set forth definitions for each of three categories of services: child care, social work and mental health (MPP Section 11-402.211, .213, .237 and .331). The definition of "Daily Supervision" that was used previously in this regulation cross-referenced a currently nonexistent Title 22 regulation and replaced with the term "Care and Supervision." The appropriate Title 22 regulation that describes such services is "Care and Supervision." As such, this MPP section was merely updated to reflect this appropriate cross reference. **To add language as suggested would broaden the scope of the original regulation by including activities not previously allowed and as such would be beyond the scope of this emergency regulation package.** [Emphasis added.]

We are very concerned about the last sentence (highlighted above) of the Department's response.

In making our recommendation for the inclusion of additional language in Section 11-400 c.(3), it was not our intent to expand the scope of activities which have been included by the Department in the past in its interpretation of the definition of "Daily Supervision." Our intent was to add language that would clarify long-standing Department policy with regard to allowable child care and supervision activities. However, in re-reading the text of our original September 14th comments, we can see that the Department may have interpreted them as a recommendation for an expansion in the scope of allowable activities. Again, that was not our intent and we apologize if the wording of our comments created confusion.

Specifically, in discussing the activities which are played by parents with children who have special needs (including those with health, mental health, and behavioral issues), it was not our intent to include under the definition of "Care and Supervision" activities which are properly considered to be medical care and treatment and which can only be performed by medical professionals under the scope of their licenses or certifications.

Even with this clarification of our intent, we understand that the Department may nevertheless feel that additional language, such as that suggested by the California Alliance in our September 14th comments, is not necessary since the change proposed

by the Department merely updates the appropriate cross reference to Title 22 regulations. If that is the case, we would ask that the Department's Response, with regard to our September 14th comments on Section 11-400 c.(3), be amended to delete the final sentence: "To add language as suggested would broaden the scope of the original regulation by including activities not previously allowed and as such would be beyond the scope of this emergency regulation package."

Response:

In reference to Section 11-400c.(3)

Thank you for your comments and clarification of the recommended additional language to this section. After further discussion of clarity over the use of the term "special needs" and the subsequent clarification of your intent, we are modifying the response in the Final Statement of Reasons to read:

Existing law only allows AFDC-FC payment for care and supervision, social work and mental health activities (Welfare and Institutions Code Section 11460(b)). The regulations and the August 30th letter referenced therein set forth definitions for each of three categories of services: child care, social work and mental health (MPP Section 11-402.211, .213, .237 and .331). The definition of "Daily Supervision" that was used previously in this regulation cross-referenced a currently nonexistent Title 22 regulation and replaced with the term "Care and Supervision." The appropriate Title 22 regulation that describes such services is "Care and Supervision." As such, this MPP section was merely updated to reflect this appropriate cross reference.